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THE HISTORY OF LEGISLATIVE METHODS IN THE PERIOD BEFORE 1825

By

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TO
V. B. P.

PREFACE

It is the purpose of this work to trace the growth of the committee systems in the lawmaking bodies of the colonies and states from about 1750 to 1790, and in the federal House of Representatives from the beginning to 1825. During these years the committee form of organization was so firmly established that it has become the distinguishing feature of the American legislature. In view of this fact it seemed to be worth while to put in accessible form the more important steps in that early development. Matters of procedure are touched upon only in so far as they throw light on the main theme. In the processes of legislation it is difficult to separate completely the operations of the regular committees from the activities of the party caucus, and the following chapters discuss both types of organization, the formal, provided for by the rules, and the informal, supplied by the political party. An attempt is made to show how the colonial legislatures were directed by party leaders, how the caucus and the executive influenced the work of the federal House, and also how certain arrangements made primarily to facilitate legislation have affected some of the larger aspects of constitutional history.

This study was undertaken at the suggestion of Professor Allen Johnson, of Yale University, and the material in Chapters I to VII, inclusive, with the exception of a part of Chapter II, was worked out in the form of a doctoral dissertation under his direction in 1913. The writer is very glad to acknowledge his indebtedness to him for helpful advice and criticism at that time. Those chapters have subsequently been largely rewritten,

and the last six are entirely new. The writer also wishes to take this opportunity to express his grateful appreciation to Professor Charles M. Andrews, of Yale University, both for his suggestions while the work was in progress, and for reading and criticising the whole manuscript before it went to press. It is also a pleasure to thank the officials and attendants at various libraries, particularly those of Yale and Harvard Universities, the Massachusetts Historical Society, the State Library of Massachusetts, and the American Antiquarian Society, for their assistance in the search for material.

R. V. H.

Boston, Massachusetts,
December 21, 1916.

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CHAPTER I

STANDING COMMITTEES IN THE COLONIAL LEGISLATURES, 1750-1775

By 1760 a change little short of revolutionary had taken place in the colonial assembly. In the beginning, when the settlements were small, it had apparently been looked upon as a sort of borough corporation, vested with authority over local matters of secondary importance. In England it was still so regarded at the time of the Revolution. On that side of the water there was no appreciation of the fact that the growth of the assembly had kept pace with the increase in population, so that the representatives of the voters had formed the habit of dealing with almost every kind of colonial problem. This development had been fostered by British ignorance of or lack of interest in American affairs, and after several decades the colonists naturally assumed that privileges and powers which they had gradually acquired were theirs by prescriptive right. Certain it is that by the end of the Seven Years' War these American assemblies were claiming for themselves authority in all colonial matters corresponding to that exercised by the House of Commons in England. After they obtained control of colonial finance, they were able to subject the governors to their rule, and thus they made themselves the mainspring in the whole political mechanism. That by coöperating with the governor they could make his administration an unqualified success, the careers of such men as Shirley clearly prove; by oppos-

ing him, they could completely ruin the most carefully prepared executive plans.

This consciousness of power, derived from actual achievements in the past, made the assemblies somewhat independent at best, and extraordinarily obstreperous and disagreeable at the worst. Members who won prominence were aggressive, self-confident politicians, whose frontier spirit made them contemptuous of administrators sent over from England. Between the points of view of the two groups, royal officials and colonial assemblymen, there was a gulf as wide as the ocean. When differences arose between them, as they inevitably did, the leaders in the house soon showed that they knew how to organize their forces in the most effective way for the defense of their claims.

Whatever names they may have adopted, House of Burgesses, House of Representatives, or Commons House of Assembly, from New Hampshire to Georgia these colonial assemblies were all very much alike in external features and general structure. Each had a lower house, representing the voters, and an upper chamber representing British authority, proprietary or king. They had similar officers: speaker, clerk, sergeant-at-arms, and doorkeepers; with few exceptions their procedure in passing bills was similar. More important still, they all transacted about the same kind of business. They kept in touch with the agent in England, supervised the treasurer and his accounts, had general oversight of both raising and appropriating money, and made laws for the colony. They differed chiefly in size, and in the degree of complexity of their internal structure. The question of size is not particularly important, but the types of organization worked out in the various assemblies are not unworthy of attention, partly because of their possible influence on the federal Congress, but

more especially because they reveal the true source of legislative strength.

In the case of these early bodies, as in Congress itself, it is essential to remember that there were generally to be found two different types of organization: the formal committee system on the one hand, and the party machine on the other; of these, the latter was infinitely the more important.

At the present time, the most obvious and fundamental difference between the British House of Commons and the American House of Representatives is the prominence of the standing committee system in the latter body. And yet, in spite of this fact, as Dr. Jameson has shown, the standing committee did not originate in local colonial assemblies, but in the British House of Commons.[1] The institution first came into use in Parliament, near the close of the sixteenth century. Its subsequent decline and disappearance as an active factor in legislative work there was probably due to the rise of the Cabinet. At the very time when the institution was becoming important in America, it had practically died out in the House of Commons, so the assumption that it was of strictly American origin was natural.

Standing committees were used in the House of Commons as early as 1571; in that year a group of election cases was referred to a single committee, and two others were also appointed, one on grievances, and another on religion.[2] In 1592 there appeared a genuine standing committee of the modern American type, on privileges and elections. This was appointed to "examine and make report of all such Cases touching the

1 Jameson, "Origin of the Standing Committee System," in *Pol. Sc. Quarterly*, 1894, pp. 246-247.

2 *Commons Journal*, I, 83, April 6 and 7, 1571. "At the same time, another Committee was nominated, to consider of those griefs and Petitions . . ." etc. D'Ewes, 157, 159; Jameson, 248.

Elections and Returns of any of the Knights, Burgesses and Barons of this House, and also all such Cases for priviledge as in any wise may occur or fall out during all the same sessions of Parliament.''[3] This committee soon came to be a regular factor in the organization of the House, so that when the motion for its appointment was made in 1603, the clerk could add: ''This is an usual Motion in the Beginning of every Parliament.''[4] For several decades questions relating to privileges and returns were customarily referred to this committee.[5]

The committee on privileges remained a standing committee, but a peculiar custom developed in the case of the committees on religion and grievances. Instead of referring matters of this kind to committees of a few members, the House would set aside certain days when they might be taken up in committee of the whole. In 1625, for instance, there were standing committees on privileges and on religion; then, orders were given to the effect that on every Tuesday there should be a session of the committee of the whole House for courts of justice; on Wednesday and Friday for grievances, and on Thursday for trade.[6] Three years later, however, a

[3] D'Ewes, 471, February 26, 1592; Jameson, 251.

[4] *Commons Journal,* I, 149, March 22, 1603.

[5] These questions related to election returns, contested elections, and in general to all matters which concerned the special privileges of members. A member's servants were also clothed with some of their master's dignity, and any affront to them might be taken up by the House. An amusing instance of this kind occurred in 1603, and was actually referred to the committee on privileges. The clerk's dignified account of the affair is worth quoting. ''Complaint was made of certain Pages, who, disorderly and violently, upon the Parliament-stairs, had taken a Cloak from one Richard Brocke, a young Youth, Servant to a Member of the House, and carried it to the Sign of the Sun, a Tavern, in Westminster; and the Owner following them, and demanding his Cloak, they offered it to the Vintner's Servant for such Wines as they called for; and, when the Reckoning was brought in, they left it in lieu of Payment; and the Vintner's Man by Force kept it from the Owner.'' *Commons Journal,* I, 152, March 24, 1603.

[6] *Commons Journal,* I, 817, 818, February 9 and 10, 1625. These were known as ''Grand Committees,'' while the regular standing committee on

day was appointed for a grand committee on religion, and with that change the system was given its final form. There was first, a standing committee on privileges, and then there were the four grand committees, or committees of the whole House, on religion, courts of justice, grievances, and trade.[7]

In form, this system lasted until 1832, but it fell into disuse long before that date. In the first session after the Reform Bill of 1832 went into effect, the customary motion to appoint them was made as usual, but it was opposed by some of the members on the ground that these grand committees were "a complete dead letter." A Mr. Littleton said that he had spent considerable time in looking over the journals, and he could discover only one instance in which the committee on religion had been used since the Long Parliament. A few days later the discussion was continued, and, as the record stands in Hansard, "The Order for the Appointment of the Standing Committees was then negatived." Such was the end of the grand committees, which had hitherto been regularly appointed since 1628.[8]

This committee system then was in active use in Parliament during the seventeenth century, the very time when American legislatures were taking shape. If, in search of precedent and example, the colonists examined the *Journals* of the House of Commons at all, they could not help becoming familiar with the practice of referring certain matters to standing committees. The conception of such an institution, evolved in England in the course of centuries of parliamentary experience,

privileges was called a "select committee," because it was composed of only a part of the members of the House. In modern parlance the term "select committee" is applied to those committees appointed for a single piece of work.

[7] *Commons Journal*, I, 873, March 20, 1628.

[8] *Parl. Debates*, 3d Series, Vol. 15, especially pp. 229-230, 627; February 6, 13, 1833.

was thus placed at the disposal of these frontier legislatures at the very beginning of their career.

In spite of their common origin, American legislatures differed widely in respect of their internal structure. Their committee systems ranged all the way from a practically exact imitation of the one just described, through more or less extensive variations of it, to one having no trace of parliamentary precedent. There is no doubt that committee development in both New York and Virginia was directly influenced by English practices, while that in the House of Representatives of Massachusetts reveals not a trace of English influence. The reason for this divergence may be sought, in part at least, in the nature of the connection, or lack of it, between the colonies and England.

It has been frequently pointed out that the relations between Virginia and the other middle and southern colonies and England were much more intimate than in the case of the northern colonies. The agricultural products of the South were for the most part shipped to England, and the planters always kept up a regular correspondence with their agents at home. Then, too, it was not unusual for the aristocratic southerners to send their sons to English universities, where they became thoroughly familiar with English customs. Naturally when some members of the assemblies had been educated in England they would be inclined to follow British precedents in legislative affairs. It is also reported that in some cases the clerks in the assemblies were Englishmen, who, because of experience in Parliament, were intimately acquainted with procedure in that body.

In New England, on the other hand, connection with the mother country was slight. The settlement there had been made primarily to secure more freedom, and the

descendants of the Puritan colonists had never formed the habit of looking to England for guidance in anything. It has been well said that New England represented the very "dissidence of dissent." This spirit of separatism, brought out so clearly in the difficulties with Charles the Second and Sir Edmund Andros, is well illustrated by an anecdote—which may or may not be true—of 1689. It is said that when plans were being made in Boston for celebrating the accession of William and Mary, it was decided not to fly the English flag in honor of the occasion, for the very simple reason that not a single one could be found. Then, too, trade relations bound New England more closely to the West Indies than to the home market, so the economic connection, so prominent in the South, was missing. Legislators in New England, therefore, did not have the opportunity to become familiar with procedure in the House of Commons. These points are mentioned, not as adequate explanations of the differences that will be pointed out in detail below, but as material facts having more or less bearing on the case. They may account for differences in the legislative customs of Massachusetts and Virginia, but they do not tell why there was so little trace of the English committee system in South Carolina before 1769.

The best instance of deliberate adoption of the committee system of Parliament is to be found in the Assembly of New York. At the beginning of a new Assembly, just as at the opening of a new Parliament, days were regularly set apart for the meeting of "Grand Committees" for grievances, courts of justice, and trade. Then a standing committee of privileges and elections would be appointed, in accordance with English precedent. The legislature of New York may have considered itself so pious that no grand committee for religion was

needed, or so far beyond hope that one would be useless; certain it is that none was provided for. The Assembly had some sort of a committee on laws, regularly appointed, but apparently not a standing committee in the strict sense of the word. With these two exceptions parliamentary custom was followed to the very letter.[9]

If the legislators of New York kept close to English precedent in form, they were equally exact in the matter of procedure. By the middle of the eighteenth century, if not before, the grand committees in Parliament had become "a complete dead letter." They were practically as defunct in New York. Between 1750 and 1775 only five different questions were referred to the grand committees: two to the committee for courts of justice, and three to the one for grievances.[10] These five subjects might just as well have been referred to select committees, in accordance with the regular custom. It is difficult to see why the grand committees should have been used at all. Evidently some member of an experimental turn of mind wanted to see whether or not the rusty old machinery could be made to move. He proved that it could, because reports were ultimately submitted, but the use of these committees was clearly contrary to all precedents.

An investigation of the *Journal* for the years 1737 to 1763 shows that the grand committees were not used once during that period. As a matter of fact they made their first appearance in the Assembly in 1737, for the

[9] *N. Y. Assembly Journal,* September 4, 1750, p. 277.

[10] *Ibid.,* November 23, 1763, p. 727; November 27, 1765, pp. 786-787; February 6, 1772, p. 42; February 16, 1773, p. 62; February 3, 1774, p. 34. The grand committee for trade was never mentioned after the day of its appointment. No business was ever referred to it, and there is nothing in the *Journal* to indicate that it ever met.

Journal gives no hint of their existence before that date.[11] Now the ways of the legislature are and have been devious and obscure, so that extraordinary actions are to be expected, but their aberrations are almost always susceptible of explanation. This sudden adoption of a useless, unused, worn-out committee system was apparently one of the by-products of an extremely important constitutional development, which affected all the colonies. During the first half of the eighteenth century the legislatures were beginning to find themselves, so to speak, and to realize their own strength. Along with this consciousness of power there was a natural desire to increase their influence. In a word, the American assemblies began to feel that their position corresponded to that of the Parliament in England, and that their authority in American affairs was supreme. Now if the Assembly resembled the House of Commons in power, it is not strange that the members should desire a like resemblance in form. As one means of carrying out the parallel they hit upon the superannuated committee system, still somewhat imposing from an ornamental standpoint, and attached it bodily to the Assembly. Then, if their claims were challenged, they could point with pride to their legislature, for was it not like its parent even in minute details?

This conscious copying of British customs, revealed in the organization of the House, was referred to at least once in the course of a debate. In 1768, while discussing a point of committee procedure, Colonel Livingston argued that it would be advisable to follow parliamentary precedent, because of "our imitation of the practise of the Commons of Great Britain. . . ."[12]

[11] *N. Y. Assembly Journal,* July 23, 1728, p. 575, no mention of the grand committees; September 1, 1737, p. 704, first mention.

[12] *Ibid.,* December 16, 1768, p. 52.

While it bears just as unmistakably the marks of its origin as does that in the Assembly of New York, the committee system in the House of Burgesses of Virginia was the very opposite of a dead letter, or a mere survival of the past. Instead of being attached to the legislature after customs had become fixed, the standing committee was introduced at an early stage in its career. As the House itself developed, the committee system grew with it, so that it became an important factor in procedure. In New York the system might have been removed in 1770 as suddenly as it had been introduced in 1737, without interfering with or affecting in any way the work of the Assembly, but an abandonment of the standing committees in Virginia would have necessitated a radical rearrangement of legislative methods.

The history of the standing committee in Virginia shows how an institution may develop under the operation of two different forces. There was evidently a more or less conscious attempt to make the House of Burgesses correspond in form as closely as possible to the House of Commons. At the same time, the system developed gradually, in response to the pressure of an increasing volume of business. Perhaps it would be more accurate to say that the amount of work made the committees necessary, and that parliamentary custom supplied their names. By 1769 the system was complete, with six standing committees, five of which were named after those in Parliament, while one was a local invention.

As early as 1691 there is evidence that the House of Burgesses considered itself a House of Commons in miniature. In that year the colonial agent was instructed "to supplicate their majesties to confirm to Virginia the authority of the Gen'l assembly consisting of the Gov-

ernor, Council, and Burgesses as near as may be to the model of the Parliament of England.'"[13] With that feeling so concretely expressed, it is not strange that the form of the colonial assembly began to resemble that of Parliament.

The first three standing committees in the House of Burgesses were those on privileges and elections, propositions and grievances, and public claims, two of which show traces of an imitation of parliamentary custom. All three had apparently been in active service several years before 1680. The existence of the committee on claims shows that Virginia already had a clear idea of the value of the standing committee, and that she had learned to adapt the institution to local needs. The three final additions to the group, on courts of justice, trade, and religion, for each of which there was precedent in England, at first sight appear to be cases of adoption for the sake of mere appearances, in no way different from those in New York.[14]

The committee of public claims, strictly a colonial development, had originally been a joint committee, which acted as the highest court of appeals in the colony. After its judicial work was taken away in 1680, it lived on as a House committee, to investigate claims laid before the legislature.[15] In 1727 the committee on courts of justice appears to have been appointed for the purpose of bringing about reforms in the courts of the colony. It was ordered "to inquire into the methods of proceeding in the Courts of Justice and the occasions of

[13] Bruce, *Inst. Hist. of Va.*, II, 478, note 1.

[14] For the early history of the first three, see Bruce, *Inst. Hist. of Va.*, II, 478, 485; Miller, *Legisl. of Va.*, 171; Hartwell, Blair, and Chilton, "Present State of Va.," in Mass. Hist. Soc. *Colls.*, 1st Series V, 139.

First appointments of the last three: *Va. H. of B. Journal*, February 10, 1727, p. 16; May 7, 1742, p. 6; May 8, 1769, p. 190.

[15] *Ibid.*, February 28, 1752, pp. 7-9; November 4 and 5, 1762, pp. 71, 75; and *Journal* for 1772, *passim.*

delaies therein, and to prepare a Bill for amending the defects of the Laws now in force relating to the several Courts of the Colony, and for the expediting of Business.''[16]

Why the committee on trade should have been appointed in 1742 is not so clear, but the committee for religion, created in 1769, was certainly the outgrowth of local conditions. In 1768 the evangelical activity of certain dissenters brought about a sweeping religious revival, the result of which was considerable violence. The Baptists in particular were regarded as a disturbing social element, and in 1768 a member of that denomination was imprisoned because of his pernicious religious operations. Between 1768 and 1775 thirty preachers and a few laymen suffered the same fate. The Burgesses were compelled to take cognizance of the question, and in order to deal with it as effectively as possible, they created a standing committee of religion.[17] Had there been no precedents in the House of Commons, difficulties relating to courts and religion might have been dealt with in some other way than by the appointment of committees. But the Virginians were acquainted with the customs of Parliament, and in solving their problems they very naturally made use of their knowledge of English procedure. Thus while conditions to be improved were local, parliamentary usage suggested the remedy.

By 1769, then, with the exception of the committee on claims, the list of standing committees in Virginia corresponded to that in the House of Commons. In England these were grand committees or committees of the whole House, while in Virginia, theoretically at least, member-

[16] *Va. H. of B. Journal,* February 10, 1727, p. 16.

[17] *Ibid.,* May 8, 1769, p. 190; Eckenrode, *Separation of Church and State in Va.,* 36-38. This committee had not been appointed ''from time immemorial,'' as Mr. Eckenrode states on pp. 132-133.

ship was not so extensive. But as time went on, the system in Virginia was made to resemble that of the House of Commons in form as well as in name. In some way the custom developed of adding to those members originally appointed, until by the end of the session the committees would be double the size they were at first.[18] That custom was in effect an approach toward the idea of the grand committee, and a further step in that direction was taken when the privilege of voting in committee meetings was given to all House members who cared to attend, whether they had been formally appointed or not. An order to this effect, applying only to the committee on privileges and elections, was passed in 1772, but in 1776 like permission was given to the committees on propositions and grievances and on religion.[19]

This peculiar custom of giving all members a voice in the deliberations of these committees may have been forced upon the Burgesses by chronic non-attendance. In 1775 Dinwiddie wrote to Halifax that "Our Assembly met the 29th Ult'o, but not above one-half of them gave their Attendance."[20] It is impossible to gather from the *Journal* just how regular or irregular the attendance was, and it is of course unsafe to generalize from a single piece of evidence. There is reason to believe, however, that under ordinary circumstances there were numerous absentees.

[18] The following figures, taken at random from two different sessions, give an idea of the increase:

	1769		1774	
	First appointment	End of session	Beginning	End
Religion	41	51	28	57
Priv. & Elects.	23	31	24	40
Props. & Grievs.	56	76	37	73
Claims	24	34	12	36
Courts of Justice	22	30	10	25
Trade	20	30	16	22

[19] *Va. H. of B. Journal,* February 13, 1772, p. 162; November 6, 1776, p. 43.

[20] *Dinwiddie Papers,* II, 273.

The trend of committee development in Virginia suggests the point mentioned above in discussing the Assembly of New York, that is, that as the legislatures became more and more firmly convinced of their own importance, they took pains to adopt the organization of the House of Commons. The prevailing political belief found expression in the institutional development within the legislative bodies.

But the resemblance of the standing committees of Virginia to those of New York and England was confined to name and form. Instead of serving as mere memorials of an ancient custom, they were vigorous, hard-working groups, actively engaged in legislative work. Virginia alone of all the colonies really had a practical understanding of the possibilities of an efficient committee system.

In the House of Burgesses the greater part of the work had to do with petitions presented to the assembly. At that time few measures demanding constructive legislation came up in the course of a session, but there were always a thousand and one local matters under consideration. Much of this work, such as looking up the truth of facts alleged in the petitions, or investigating conditions which had been complained of, could be done by committees. Procedure had become so well systematized by 1750 that no time was lost in putting such petitions into the hands of the proper committee. All those of a general nature were customarily referred to the committee on propositions and grievances, the largest and most active of the group. Originally this committee had been appointed to consider complaints of one sort and another which were presented to the assembly.[21] As time went, however, complaints formed only a small

[21] Bruce, *Inst. Hist. of Va.*, II, 480-485; *Va. H. of B. Journal*, February 28, 1752, pp. 6-7.

proportion of the work referred to it. It had to deal literally with all sorts of petitions, which included the most varied subjects. Some asked for changes in the laws relating to the shooting of squirrels and crows, bounties for killing wolves, holding county fairs, regulation of peddlers, treatment of stray animals, and tobacco inspection; others dealt with questions of roads, bridges, ferries, and county boundary lines; still others would be concerned with the sale of parts of entailed estates; then, men engaged in doing work for the state, printing the public papers, or keeping a lighthouse, for example, would petition for an increase in salary. They differed so much that a classification of subjects dealt with is almost impossible.[22] In some sessions as many as sixty petitions of this kind would be referred to the committee on propositions and grievances alone.

Petitions of a more special nature would be referred to other committees. Those relating to commerce and related matters, such as maintenance of lighthouses, would go to the committee on trade. After 1769, petitions relating to religious questions generally, vestry troubles, and church glebe lands, were referred to the committee on religion.[23] Other petitions, dealing with contested elections and related matters, went to the committee on privileges and elections. These were concerned generally with charges of the use of illegal methods in attempts to win an election, bribery and intimidation, for example.[24]

The handling of these petitions necessitated a large

[22] The following references give an idea of the heterogeneous nature of the petitions. *Va. H. of B. Journal,* pp. 159, 160, 165, 168-169, 186, 190-191, session of 1772.

[23] To the comm. on trade: *Va. H. of B. Journal,* May 7, 1742, p. 6; May 25, 1770, p. 17; May 21, 1774, pp. 119-120. To the comm. on religion: May 8, 1769, p. 190; also pp. 192, 195, 196, 216, 238, 245.

[24] *Ibid.,* February 28, 1752, pp. 6, 8; February 29, 1752, p. 19; March 3, 25, 1752, pp. 13, 57; November 5, 1761, p. 9; May 17, 1777, p. 18.

amount of routine work. In every case the committee had to make investigations concerning the truth of the facts alleged, and then decide whether or not the case was important enough to warrant legislative action. Frequently witnesses had to be summoned, and the committee was sometimes kept busy with the taking of evidence from one end of the session to the other. Every case, no matter how trivial it seemed, was given a fair hearing.

The history of the committee on courts of justice shows how a committee, in the creation of which parliamentary precedent had played a large part, could be adapted to local needs. It was supposed to consider all matters relating to the courts, but as a rule few such questions came before the colonial assembly. In Virginia, however, the committees were not ornaments, and if there was not enough work in its particular line to keep a committee busy, duties of another kind would be turned over to it. Before 1727, the committee on propositions and grievances had been called upon to go through the Journal of the preceding session, and to make up and lay before the House a list of all unfinished business. At the same time it also made out a list of temporary laws that had expired and were in need of renewal. This work was finally transferred to the committee on courts of justice, because its regular duties were light.[25]

Work on petitions was not, however, the unique feature of the standing committee system in Virginia. To a certain extent similar work was done in the same way in some of the other colonies. But the House of Burgesses was the only assembly which permitted its standing committees to frame and amend bills. To-day the

[25] *Va. H. of B. Journal*, February 28, 1752, pp. 7, 8; November 5, 1762, pp. 72-73; November 11, 1769, pp. 248-250.

This practice of course prevented the smothering of business in committee.

most important function of the regular committees is to put measures in shape for their passage through the legislature, and the very idea of a standing committee system which had no connection with work of that kind seems absurd. In all colonial assemblies bills were drafted by select committees, and sometimes amendments would be made in the same way. But the use of the standing committees as parts of the actual law-making machinery was peculiar to Virginia.[26]

Although the committee system of Virginia was not typical, but unique, as regards both the nature of work done, and the number of standing committees, it serves nevertheless as an excellent standard by which the others may be judged. While no colonial assembly had as many standing committees, most of them had one or two. All of the colonies from New York to Georgia, with the possible exception of Delaware, had some sort of a committee on grievances. In New York and New Jersey it was a grand committee, but elsewhere it was standing. In fact, there was little variation in form, and, except in Maryland, where it was called the committee on grievances and courts of justice, and in North Carolina and Georgia, where it had the Virginia name, propositions and grievances, there was no difference in name. It was in brief a committee either to consider complaints presented to the assembly, or to formulate the complaints of the colony itself.[27]

[26] The following references are examples, not isolated cases, of this practice. *Va. H. of B. Journal* for 1766, pp. 25, 33, 35, 38, 40, 46, 50, 64; for 1767, pp. 144-146; for 1770, pp. 13, 40; 1772, pp. 176-178.

[27] *N. Y. Assembly Journal,* September 4, 1750, p. 277; November 23, 1763, p. 727; February 16, 1773, p. 62.

N. J. H. Journal, September 10, 1776, p. 7.

Pa. H. Journal, October 16, 1758, p. 1; November 16, pp. 4, 5; June 2, 1759, p. 55; February 28, 1759, p. 22; January 22, 1767, p. 512; Franklin, *Works,* II, 485-493.

Md. H. Journal, November 5, 1765, p. 17.

N. C. Col. Recs., V, 240, December 12, 1754; V, 297-300, January 9, 1755.

Another standing committee, found in nearly all the middle and southern colonies, was that on privileges and elections. This differed little in the various assemblies, and a description of the work done by the committee in Virginia would apply equally well to them all.[28]

In addition to the committees named above, there were a few standing committees that deserve mention. In North Carolina there was a joint committee on claims, similar to the one in Virginia, and another on accounts, the duty of which was to examine and audit all public accounts, such as those of tax collectors, military officers, and the state treasurers.[29] Then, long before the revolutionary committee of correspondence appeared, several colonies had committees of that name, the duties of which were to keep in touch with the colonial agents in England. In some cases they were regular standing committees, but in others they were named by statute, so that they were, strictly speaking, boards or commissions rather than legislative committees.[30]

S. C. H. Journal, June 26, 1769, p. 11. In South Carolina the committee was not created until after the Revolutionary agitation became serious, and it was probably an outgrowth of that movement.

Ga. Col. Recs., XIII, 13, January, 1755.

[28] *N. Y. Assembly Journal,* September 4, 1750, p. 277; *Md. H. Journal,* November 5, 1765, p. 17; *N. C. Col. Recs.,* VI, 364; *Ga. Col. Recs.,* XIII, 13, January 8, 1755. *S. C. House Journal,* October 13, 1760, p. 12.

In South Carolina the only standing committees were those on privileges and elections, and on grievances; the latter was not created until June 26, 1769. *S. C. H. Journal,* p. 11. The following statement is made by W. Roy Smith, in *South Carolina as a Royal Province,* p. 11: "Standing committees on religion, privileges and elections, grievances, trade, and courts of justice were appointed. . . ." The *Journal* of the House contains no record of any such appointments, and the writer quoted gives no authority for his statement. The only colonial assembly having such a complete list was the House of Burgesses of Virginia. It is not ordinarily regarded as a safe practice to draw upon the journal of one legislature for information regarding procedure in another.

[29] *N. C. Col. Recs.,* V, 239, 307, 965-975.

[30] *N. Y. Assembly Journal,* July 5, 1755, p. 452; *Pa. H. Journal,* October 16, 1758, p. 1; *Md. H. Journal,* December 20, 1765, pp. 84-85, appointed for the recess only; *Va. H. of B. Journal,* November 8, 1762, p. 99, named by statute; *N. C. Col. Recs.,* VI, 429; *Ga. Col. Recs.,* XIV, 10.

The assemblies of these middle and southern colonies formed a group, the standing committees in which all bore clearly marked traces of their parliamentary origin. The New England colonies, on the other hand, formed a wholly distinct group, in which the organization of the assemblies did not resemble that of the House of Commons. In New Hampshire, Rhode Island, and Connecticut there were no standing committees at all before the Revolution, and those that flourished for a time in Massachusetts were of local origin.

By 1759, the House of Representatives of Massachusetts was on a par with the House of Burgesses, so far as size and amount of business were concerned. The legislature of Virginia, however, had developed a more finished method of transacting business. As was the case in many other assemblies, the greater part of the work was concerned with petitions. In the first session of the new House, in 1759, a little over two weeks in length, fifty-nine petitions were introduced, all of which, if granted, required a special vote of the General Court, to cover cases not specifically provided for by law. In the course of the four sessions from May, 1761, to May, 1762, over a hundred and seventy petitions were presented. These covered the widest range of subjects. Men asked the legislature for authorization to dispose of the land of their insane relatives, for permission to start lotteries—this in Puritan Massachusetts—to change their place of worship, to alter boundary lines, and to fish for alewives in seines,—in short, they petitioned for anything they wanted, and their wants were both varied and curious. Instead of relying upon standing committees to perform the routine work in connection with this heterogeneous mass of business, the House of Representatives turned it all over to separate select committees. This method did not insure any greater

care in the handling of these documents than did the Virginia plan, and it was surely unbusinesslike and wasteful. Apparently with a growing realization of this fact the House, in 1760, appointed a standing committee to deal with petitions of sick and wounded soldiers.[31] In 1762, seven different standing committees were appointed, each of which was expected to handle petitions relating to a certain definite subject. These committees were brought into existence, not for the purpose of imitating parliamentary precedent, but to enable the House to transact its business more expeditiously, and their names bear evidence of their local origin. They were appointed to consider petitions of sick and wounded soldiers, of those captured in the war, of men who had lost their guns, and of those who for some reason had failed to get their wages; the other three were to deal with petitions regarding the sale of lands, rehearings of lawsuits, and requests for pensions.[32] The following year the committee on petitions of soldiers who were deprived of their wages was not reappointed, and in 1763 two more were dropped. From 1765 to 1767 none at all were appointed, and from 1767 to 1774 there was only one, on petitions regarding the sale of land.[33] As the revolutionary movement increased in violence, business of a general nature received scant attention in the House, and standing committees on petitions were no longer needed. Then, too, the standing committees had been appointed to deal with questions growing out of the war, and when it was over petitions on those particular subjects ceased to be burdensome. This rise of standing committees is interesting, because they were clearly a local development. Large amounts of work

[31] *Mass. H. Journal*, June 2, 1760, p. 16.

[32] *Ibid.*, May 29, June 2, 1761, pp. 9, 20.

[33] *Ibid.*, May 28, June 1, 1762, pp. 13, 27; May 26, 1763, p. 11; June 1, 1764, p. 12; May 28, 1767, p. 9.

would have forced the legislatures to adopt the system eventually, even though there had been no precedents for them in Parliament.

Aside from these in Massachusetts, and the revolutionary committees of correspondence after 1772, there were no other standing committees in New England. The so-called committees of war which appeared in the northern colonies during the Seven Years' War were not legislative committees at all, but administrative boards appointed by the assemblies. In New Hampshire they were named in the military appropriation acts. When the assembly voted money for the war, it would name at the same time a committee of its own members to superintend the expenditure of those funds. The "Committee of Warr" appointed in Rhode Island in 1758 contained no members of the House at all.[34]

Besides the standing committees, certain select committees were regularly appointed in all the colonies each term, and were therefore a part of the committee systems. The most common were those to reply to the governor's speech, to audit the public accounts, and to report on temporary laws which needed to be renewed. Thus the regular recurrence of certain definite work gave rise to a committee to attend to it.

All the colonial assemblies appointed numerous select committees in the course of a session. Whenever the House wanted more light on any subject, which did not lie within the field of any of the standing committees, a small committee would be appointed to deal with the matter.

Except in the House of Burgesses, bills were always drafted by select committees. It was not the custom then for an individual member to lay bills before the House on his own responsibility. He might move that

[34] *N. H. Prov. Papers,* VI, 369; *R. I. H. Journal,* May 6, 1758.

a bill be brought in, or he might ask permission to introduce a measure, but in every case a select committee would be appointed to prepare the draft.[35]

If the primary object of this comparative study of the standing committee in colonial assemblies were the discovery of precedents bearing on Congressional procedure, the results would indeed be disappointing. It is evident that the records of the House of Burgesses alone contain material of value on that point. With the possible exception of that in North Carolina, the other legislatures might be ignored. To be sure assemblymen in other colonies knew what the standing committee was, but their own experience would convince them that it was an unnecessary factor in lawmaking. Certain it is that outside of Virginia the standing committee was anything but the distinguishing characteristic of the American legislature.

But in some cases negative results are by no means valueless. It is evident that the standing committee reveals very little of the real forces at work in the complex process of legislation, and consequently it cannot be the proper avenue of approach. If that is the case, what was the important element in legislative organization? Legislatures as such do not run themselves. There is always an inner circle, such as the Cabinet in England, the late committee on rules in Congress, or the caucus. For light on this prime factor in legislative processes, recourse must be had, not to the official records, because they are always silent on the most

[35] For examples see: *N. H. Prov. Papers,* VI, 540, VII, 147; *Mass. H. Journal,* June 1, 1759, p. 11; *R. I. H. Journal,* June 15, 1764; *N. Y. H. Journal,* September 5, 1750, p. 277; *Pa. H. Journal,* November 24, 1758, p. 7; *Md. H. Journal,* November 6, 1765, p. 18; *Va. H. of B. Journal,* November 14, 1753, p. 122; *N. C. Col. Recs.,* IV, 819, VII, 929; *S. C. H. Journal,* May 19, 1760, p. 196; *Ga. Col. Recs.,* XIII, 27.

interesting aspects of their subject, but to the annals of the political party. It is only by combining the accounts of the two types of organization, formal and informal, that an adequate conception of the legislature as it was can be formed.

CHAPTER II

PARTY ORGANIZATION IN THE LEGISLATURE

The legislature itself, with its formal committee system, is the instrument by means of which policies and principles are hammered into statutes; it is in no sense the agent which decides upon the advisability of proposing or making new laws. Hamilton's famous financial projects, for example, were ratified by Congress, but they were drawn up and virtually passed by the presiding genius in the Treasury department. No one dreams of finding the true history of the Assumption Act in either the *Journal* or the *Annals* of Congress; the really interesting episodes in the passing of that piece of legislation are recorded in the letters or diaries of a few men who knew—or thought they knew—just how the plan became a law. It is to the party organization, the "Junto," as the colonists called it, which is at the same time within and above the legislature, that one looks for the tangible results of a session. Such being the case, the most important standing committee in the legislature is the one which receives no regular appointment, and which has no official existence, namely, the group of party leaders.

Indispensable as they are, the activities of these boards of directors are rarely brought out into the full light of publicity. The significant operations in lawmaking are most frequently the subterranean ones, concerning which little evidence exists. It is always hard to find out just what the organization has contributed in any particular case, and it is even more difficult to discover its mode of

working. There are, however, enough bits of information available to make it worth while to attempt a study of these irregular committees, and the account need not be as impressionistic as the elusive nature of the subject might lead one to believe.

In Massachusetts after 1766, and to a certain extent before, the political destinies of the House of Representatives were watched over by a powerful little group of members, the leaders of which were the Boston delegation and their friends. The names which stand out most conspicuously are Samuel Adams, Thomas Cushing, James Otis, and John Hancock of Boston, Hawley of Northampton, Sheaffe of Charlestown, together with Bowers, Dexter, and Partridge. Of this aggregation the chieftain was Adams, a man who should hold a position in the front rank of American political strategists.

When the new House organized for business on May 28, 1766, James Otis was elected Speaker, while Adams himself was made clerk. The thought of the hot-tempered Otis as presiding officer, however, was too much for Governor Bernard. By virtue of an undoubted, though seldom used authority, he refused to approve the choice of the House. Thereupon Thomas Cushing was named, and although he was a member of the party opposed to the governor, Bernard made the best of a bad matter and accepted him.[1]

Henceforth until the Revolution the business of the House was transacted by this Boston "Junto." There were no standing committees of importance after 1766, but select committees were extensively used. They drafted the various measures, resolutions, and laws passed by the House, and naturally their membership would be carefully arranged by the leaders in charge. On these committees the same names, those of the four

[1] *Mass. H. Journal,* May 28, 1766, pp. 4-5.

Bostonians and their trusted lieutenants, recur again and again, so often that mere accident could not account for their repetition. In a general statement it is difficult to convey an adequate idea of the completeness and comprehensiveness of their control. On every important committee they had a decisive majority. All matters pertaining to relations with the governor, the British government, or the colonial agent in England in particular, and in fact all general questions bearing on the heated political controversy were referred to the same men. Other names might appear from time to time, but never in sufficient numbers to change the complexion of the committees themselves. Thus even the *Journal* of the House bears witness to the importance of this particular party organization.[2]

This unofficial standing committee, for such it really was, was sometimes formally vested with authority to look after the interests of the province during recesses between the regular sessions. For instance, on February 20, 1766, just before the close of the session, a committee consisting of Lee of Cambridge, Cushing, Gray, and Samuel Adams of Boston, and Sheaffe of Charlestown, all prominent Whigs, as the opponents of the governor were styled, was appointed to take into consideration "the difficulties and discouragements as well with respect to trade, as the *internal policy* of the province," and to report at the next session.[3] In December of the same year a similar committee was appointed.[4] "Internal affairs" of the province were ordinarily attended to by the governor and council during a recess. By making these appointments the House, or rather the Whig party, was guilty of a direct attack upon executive authority.

[2] See note at end of this chapter for a list of some of these committees.
[3] *Mass. H. Journal*, February 20, 1766, p. 300; italics mine.
[4] *Ibid.*, December 8, 1766, p. 217.

The one striking exception to these general statements regarding the personnel of committees on important subjects serves as further proof, if any is needed, of the absolute power of the "Junto." In 1766 the governor was constantly urging the legislature to make an effort to discover those responsible for the riots over the Stamp Act of the preceding year. Bernard offered to lend all the assistance he could to help in the work. There is little doubt that Adams and Otis knew practically all there was to be known about those disturbances and those responsible for them, and any honest investigation would surely have implicated them. They, however, or at least the House, agreed to coöperate with the governor, and a committee was appointed to collect data. The five men named were directed to sit during the recess, and to gather information that might assist in the discovery, "as far as may be," of the guilty ones. The outbreaks had taken place chiefly in Boston and the neighboring towns, but instead of appointing members from those districts to the committee, the House appointed five men from the country, who, so far as the records show, had never served on a committee before, and who had taken no active part in the work of the House. Thus the appointees were men who had no actual knowledge of the situation, and who stood little chance of discovering the real facts. In due time this joker committee reported, but its findings revealed nothing except an apparent desire to avoid probing too deeply.[5] The subject itself was important enough, but those who ordinarily took charge of such matters did not care to conduct an investigation into operations with which they had been too intimately connected. They could effectively smother the whole thing by making it impossible for the com-

[5] *Mass. H. Journal,* June 28, October 30, 1766, pp. 142, 153-156.

mittee to get in touch with the facts.[6] Thus the record of committee appointments proves that the business of the House of Representatives, if not of the whole legislature, was effectively guided and controlled by the delegation from Boston. If they wanted action, they took it; if they wished to avoid it, they made arrangements accordingly.

A detailed analysis of the operations of this group would lay bare the very lively history of pre-revolutionary politics in Massachusetts, for the Boston "Junto" was more important than a mere legislative committee. It was the centre from which revolutionary propaganda was carried into every part of the province. Interesting as it would be to trace out the relationship between such little-known societies as the Sons of Liberty, for example, and the leaders in the House of Representatives, a study of that kind would be only remotely connected with the development of legislative organization. There were however certain important steps taken within the General Court which serve to illustrate the career of the "Junto" as a part of law-making machinery.

In the first place, the hand of the "Junto" is plainly to be seen in the election of councillors for 1766, and the years following. In Massachusetts the upper house was chosen by the lower, at the opening of each new General Court. Up to and including 1765 the conservative party, led by Thomas Hutchinson, had retained control of the Council. Even Andrew Oliver, who had achieved the unenviable distinction of being appointed distributor of stamps, was reëlected in 1765, although by an extremely narrow margin. In the next election, thanks to

[6] The General Court subsequently passed an act to indemnify those whose property had been destroyed, and to exempt from prosecution those who had been concerned in the riots.

an energetic newspaper campaign, apparently directed by Samuel Adams,[7] the presiding genius of the Boston faction, the Whigs secured an overwhelming majority in the House of Representatives. The fate of the Council was sealed by this election. The temper of the House, manifested in its organization, already referred to, was even more clearly set forth in the choice of councillors. Hutchinson, Oliver, and two other conservatives who had been instrumental in defeating the radical program of the House during the agitation over the Stamp Act, failed of reëlection. A fifth had already resigned in anticipation of the result. For the five vacant places, prominent Whigs were chosen. Although he was powerless to prevent the exclusion of his friends, Governor Bernard could at least have a negative voice in the selection of their successors. He promptly rejected the five Whigs, and for good measure he also threw out James Otis, Senior, who had been in the Council since 1763.[8] The House in turn refused to name any others, so the Council was left with only twenty-two members, instead of the customary twenty-eight. But the Whigs had carried their point, for the elimination of the five conservatives had given them a safe majority. Henceforth until the Revolution, with the exception of one year, the membership of the Board was never complete. The effect of the election on the Council was described by Hutchinson himself as follows: "In most of the addresses, votes, and other proceedings in council, of importance, for several years past, the lieutenant-

[7] *Boston Evening Post,* April 28, May 5, 1766.

[8] *Mass. H. Journal,* May 28, 29, 1766, pp. 7, 8, 10. This exclusion of Hutchinson and his friends was the outcome of a party quarrel dating back to 1760. The Whig leaders had tried to oust them before, but they had failed each year until this. *Boston Gazette,* April 26, 1762; Minot, II, 111. Public opinion would not tolerate their removal until after the disturbances over the Stamp Act.

governor (Hutchinson) had been employed as chairman of the committees. Mr. Bowdoin succeeded him, and obtained a greater influence over the council than his predecessor ever had; and, being united in principle with the leading men in the house, measures were concerted between him and them; and from this time the council, in matters which concerned the controversy between the parliament and the colonies, in scarcely any instance, disagreed with the house.'"[9]

From 1766 on the work of the House of Representatives bears witness to the extent of the influence enjoyed by Samuel Adams and his corps of assistants. For one thing the various resolutions of the legislature can often be traced back to him, through the Boston town meeting and the town caucus. It so happened that many matters of business which subsequently came before the House first appeared in the form of instructions, issued by the metropolis for the guidance of its representatives. Now the political fortunes of the town were never left to blind chance; instead they were carefully fostered by the famous Caucus Club, described by John Adams, the cousin of Samuel. This organization had all the characteristics of a modern machine. "This day," wrote Adams, "learned that the Caucus club meets at certain times in the garret of Tom Dawes, the adjutant of the Boston regiment. He has a large house and he has a movable partition in the garret which he takes down and the whole club meets in one room. There they smoke tobacco until you cannot see from one end of the garret to the other. There they drink flip, I suppose, and they choose a moderator who puts questions to vote regularly; and selectmen, assessors, collectors, fire-wards, and representatives are regularly chosen before they are chosen in the town." In the list of names of those

[9] Hutchinson, *Hist. of Mass.*, III, 156.

present, that of Samuel Adams of course appears.[10] If this club was influential enough to choose both town officers and representatives, the assumption is reasonable that it was also responsible for the pronunciamentos issued by the town meeting. As a matter of fact, the three units referred to, caucus, town meeting, and House of Representatives, were all linked together in the person of Samuel Adams.[11] Such being the case, instead of being bona fide instructions from constituents to representatives, these publications of the town were nothing but the declaration of the policies of the leaders.

Measures recommended by a machine-controlled town meeting were consistently ratified by the House of Representatives, directed by the same power. The instructions of May 26, 1766, may be taken as a fair example. On that date the town drew up its orders for its representatives, and they were strictly enjoined to regulate their conduct in accordance with them.[12] In the first place the town urged them to prevent the use of public funds contrary to the wishes of the House of Representatives. Specifically they were directed to "oppose any grants for erecting, maintaining, or garrisoning any useless or unnecessary forts or fortresses, in any part of this province"; if any such forts were being maintained, it was the duty of the representatives, so the instructions declared, to have the grievances speedily redressed.

Next the representatives were instructed to secure the

[10] John Adams, *Works*, II, 144; see also *Boston Evening Post*, March 14, 21, 1763, for other accounts. John Adams, December 23, 1765, wrote that he went with his cousin Samuel to the Monday Night Club. "Politicians all at this club. We had many curious anecdotes about governors, counsellors, representatives, demagogues, merchants, etc."

[11] The following references throw light on Adams' services in linking together town meeting and legislature: *Boston Town Recs.*, XVI, 152, 159, 161, 182; *Mass. H. Journal*, October 23, 24, 29, 1765; January 16, 17, 1766.

[12] *Boston Town Recs.*, XVI, 182 *et seq.*

passage of an act to make debates in the House of Representatives as public as those in the House of Commons.

With reference to appropriations for government officials, the town advised its representatives not to be "persimonious in the support of executive officers of government," but at the same time "to use all their influence against any one officer's holding two or more places inconsistent or interfering with each other." This was aimed at Thomas Hutchinson, who was lieutenant-governor, member of the Council, chief justice of the Superior Court, as well as judge of probate.

Finally, the instructions contained the following advice for guidance in the election of the Council: "Ordered that you take particular care in your choice of councilers and other officers of the government for the ensuing year, that they be men of integrity and wisdom, lovers of liberty, and of our civil and ecclesiastical constitution; not giving your suffrage for any whose characters are doubtful, or who are of a timid or wavering disposition."

The subjects enumerated in these instructions were brought before the House, and, what is more to the point, they received favorable attention. In compliance with the advice regarding fortresses, the House voted to reduce the forces at Castle William and also at Fort Pownall.[13] On June 11, a committee was appointed to arrange for the construction of a gallery for spectators, and the debates were duly thrown open to the public.[14] Then, to impress upon Hutchinson the fact that they disapproved of his holding so many offices, the members refused to vote any salary for the lieutenant-governor. As a matter of fact in this instance the House was carrying out a well-established custom, for it had never given Hutchinson any salary for that office, although he had

[13] *Mass. H. Journal*, June 21, 25, 26, 1766.
[14] *Ibid.*, June 11, 1766.

held it for several years.[15] The final instruction regarding the choice of members of the Council was scrupulously obeyed. It is clear that the Boston "Junto" was eminently successful in securing the adoption of its legislative program.

In the winter session of 1767-1768 the directors of the Whig forces were clearly responsible for the little work that was turned out. When the General Court convened, late in December, a committee on the state of the province was appointed, consisting of Cushing, Otis, Adams, and Hancock, the Boston delegation, and, in addition, James Otis, Senior, Hawley of Northampton, a radical of radicals, Bowers and Dexter, whose election to the Council had been negatived by Bernard, and Sheaffe, another active Whig.[16] The tangible results of the session were first a series of resolutions urging a policy of non-importation, to defeat the Townshend Acts. These were nothing but a repetition of some previously adopted by the Boston town meeting, just before the meeting of the legislature. As usual, the town ordered its representatives to have these measures of passive resistance adopted by the House. Then letters in which the cause of the Americans was set forth were despatched to Camden, Chatham, Shelburne, Conway, Rockingham, and to the Commissioners of the Treasury. The masterpiece of the session was the famous circular letter that brought so much notoriety to Massachusetts.[17] All these literary productions were drafted by the committee named, or under its immediate supervision.

Up to this point the "Junto" had been noisy and disagreeable, at least from Bernard's point of view, and it had tied his hands when he wished to protect the colony

[15] *Mass. H. Journal*, June 12, 1765.

[16] *Ibid.*, December 30, 1767.

[17] *Boston Town Recs.*, XVI, 221-226; *H. Journal*, January 15, 20, 22, 29; February 2, 11, 13, 17, 26, 1768.

from mob violence. It had not, however, openly taken liberties with the charter to the extent of encroaching on executive prerogative. But in 1768 the party machine which enjoyed so much power, both in the town meeting and in the General Court, tried to call a meeting of the assembly after its dissolution by Governor Bernard. In June of that year the cargo of the *Liberty,* one of John Hancock's sloops, had been landed without payment of duty, and the offense was magnified in the eyes of the British officials by the owner's boasts before the act itself occurred. The vessel was seized by the customs officials, who were in turn attacked by a mob. The officers themselves were stoned, the windows of their houses broken, and the collector's boat was dragged up to the Common and burned.[18] It was this manifestation of lawlessness which seems to have led to the final decision to send British troops to Boston. Although the General Court was in session at the time of the riot, Bernard dissolved it a few days thereafter. Acting upon instructions from home, he had peremptorily ordered the House to rescind its circular letter, and the House stubbornly refused to yield. After an interchange of messages which fairly bristled with bitter feeling on both sides, the governor put an end to the life of that particular assembly, and after the riot he refused to comply with the demands of the town of Boston that writs for a new election be issued.[19]

Thereupon followed an act that bordered close on revolution, namely, the attempt on the part of the political leaders of Boston to summon an assembly on their own responsibility. After their fruitless calls upon the governor, the town authorities voted to appoint representatives to a "Committee of Convention." The call

[18] *Boston Evening Post,* June 30, 1768.

[19] *Boston Town Recs.,* XVI, 260; *Journal Mass. H. of R.,* June 30, 1768.

was issued to all the other towns in the province to send in their representatives. The Boston town meeting selected as its delegates the four who looked after its interests in the House of Representatives: Otis, Cushing, Adams, and Hancock.[20] The purpose of the whole thing was of course to have a popular, or at least a representative, assembly in session when the expected troops arrived.

On the day appointed, September 26, 1768, representatives to the number of seventy, from about sixty different towns, gathered in Faneuil Hall. For chairman the Speaker of the last House, Thomas Cushing, was chosen, apparently with the idea of giving a touch of regularity to the proceedings.[21] After petitioning Governor Bernard to issue writs for a new election, the Convention drafted a set of resolutions, in which illegal intentions were disclaimed, and loyalty to the king was righteously asserted. Thereupon the work came to an abrupt end, and after remaining in session for only a week, the members left for their homes the day after the first troop transports arrived at Nantasket.[22] The unexpected moderation of the leaders, so different from their usual demeanor, was due, so Bernard wrote, to the presence of many cautious members, who consented to attend for the express purpose of restraining the Boston "Junto." Because of the firm stand taken by these men, Samuel Adams was silenced when he tried to launch out into the violent language to which the House of Representatives had become accustomed.[23] The first attempt to bring a revolutionary convention into existence was a failure.

[20] *Boston Town Recs.*, XVI, 263.

[21] *Boston Evening Post*, September 26, 1768; Hutchinson, *Hist. of Mass.*, III, 208-212.

[22] *Ibid.*, III, 211.

[23] *Boston Evening Post*, September 11, 1769, quoting a letter of Bernard to Hillsborough, September 27, 1768.

The importance of this meeting is to be found, not in its actual accomplishment, measured in deeds, or even in words, but in the fact that it met at all. According to the charter, the power of summoning a new assembly before the time set for the regular elections, was vested exclusively in the governor. In effect this "Committee of Convention" was really a Provincial Congress, similar to the one summoned in 1774. In other words, the machinery of the later revolutionary government was given an actual trial in 1768. Even though public opinion was not quite ready to sanction the complete assumption of governmental authority by the radical leaders, it was a recognized fact that all real power was in their hands. In reporting on the condition in Massachusetts shortly after his arrival, General Gage wrote Hillsborough that "those mad people (the Whig leaders) have governed the town and influenced the province a very long time. . . ." After a careful survey of the situation as a whole, he went on: "from what has been said, your lordship will conclude that there is no government in Boston, there is in truth very little at present, and the constitution of the province leans so much to democracy, that the governor has not the power to remedy the disorders which happen in it."[24] According to this statement, the organization, which was a municipal machine and a legislative committee combined, had practically superseded the regular institutions of government in the colony. To be sure it is difficult to point out specific instances of their assumption of regular administrative functions, and it is probably true that the leaders were aiming, not at the consolidation of the executive with the legislature, but rather at the clogging of the wheels of British officialdom. The natural

[24] Gage to Hillsborough, October 31, 1768, p. 18, in a collection published by Edes and Gill.

outcome of this policy of obstruction would inevitably be the rise to power of the committee in the legislature. They could not destroy one kind of authority without putting something else in its place.

Even though the main purpose of the "Junto" was negative rather than positive, in case of need it could take definite steps to bring other branches of the government under its own control. When the British government announced its intention of providing salaries for colonial executive and judicial officials out of the royal treasury, the local legislatures promptly bethought themselves of means to thwart the plan. In Massachusetts the General Court did not complain very bitterly when Governor Hutchinson reported that he would no longer need the salary provided by the colony. There seemed to be a general feeling that his power had ceased to be dangerous, and that the province was relieved of an unnecessary expense. But the equanimity with which they greeted Hutchinson's declaration gave way to excited concern when royal salaries were proposed for the justices of the Superior Court. After a desultory discussion for several weeks, the House of Representatives finally announced its policy. In the first place it gave the justices an opportunity to declare explicitly whether or not they would take advantage of the new provision. If they refused to commit themselves, they were to be denounced as enemies of their country. In the case of any who should prove to be so devoid of patriotism as to accept the new salaries, the House declared that it would be "the indispensible duty of the Commons of this province, to impeach them before the governor and council, as men disqualified to hold the important posts they now sustain."[25] The importance of this threat, involving an assumption of power that was radically new, even

[25] *Journal Mass. H. of R.*, June 28, 1773, p. 94.

in Massachusetts, can hardly be overstated. The House possessed no power of impeachment, nor had it any right to use the term "Commons of this province." The episode shows clearly enough that the Whigs were determined to raise their legislature to the level of the Commons in England.

After making its threat, the House gave the justices ample time to ponder over the possible results of a refusal to surrender. By February both parties had made up their minds. One member of the court, Trowbridge, announced that he would accept no salary paid under royal warrant, and his statement was accepted as satisfactory by the House. The other judges kept their own counsel, and the House voted to demand a definite declaration of their intentions within a week. Three of the remaining justices thereupon gave the required pledge, and agreed to accept the compensation granted by the House. Peter Oliver, the chief justice, was the only one to stand out, and he took up the challenge of the House. After bluntly stating that he had found it impossible to live on the niggardly salary provided by the legislature, he said that he intended to take advantage of the new grants. The only answer of the House was the institution of impeachment proceedings. Formal articles were drawn up and laid before the Council, but Hutchinson prevented definite action by absenting himself. Soon afterward he put an end to the contest by proroguing the assembly.[26] Thus the impeachment itself was a failure, but in spite of that the real victory lay with the House. Four justices had been brought to terms, and the attempt to establish an independent judiciary came to naught. In this whole episode the names of the regular Whig leaders constantly recur, particu-

[26] *Journal Mass. H. of R.*, February 1, 2, 7, 8, 24, 1774, pp. 113, 117, 133-135, 137-139, 194-199.

larly in the committees appointed to draft the numerous resolutions and messages. The work was certainly carried on under their supervision, and they were undoubtedly responsible for its direction. The net result of their victory, for such it was, was to bring the Superior Court under the control of the Boston "Junto."

The effect of this bitter political contest upon the administration can easily be imagined. Even as early as 1769, Governor Bernard was utterly discouraged. According to his testimony, and he was in a position to know, the royal executive in Massachusetts had become a mere cipher. His analysis of the situation in a letter to Barrington is an illuminating commentary on the strength of the Whig party leaders. "In short, my Lord," he wrote, "this Government is now brought to this state, that if the Cheifs of the Faction are not punished or at least so far censured as to be disqualified from holding Offices," if the appointment of the Council is not given to the king, and if the crown officials are not given salaries independent of the people, "It signifies little who is Governor. Whoever he is, he must either live in perpetual contention in vainly endeavoring to support the royal Rights, or he must purchase Peace by a prudential Sacrifice of them. But for these 4 years past so uniform a system of bringing all Power into the Hands of the People has been prosecuted without Interruption & with such Success that all Fear Reverence, Respect & Awe which before formed a tolerable Ballance against the Power of the People, are annihilated & the artificial Weights being removed, the royal Scale mounts up and kicks the Beam. And I do assure your Lordship that if I was to answer to his Majesty himself on this Subject, I would give it as my Opinion that if he cannot secure to himself the Appointment of the Council, it is not worth while to keep that of the

Governor. For it would be better that Mass Bay should be a complete Republic like Connecticut than to remain with so few Ingredients of royalty in it as shall be insufficient to maintain the real royal character."[27] After the new elections he wrote again, in a still more melancholy tone. "Tomorrow the new Assembly meets, which will be allmost wholly composed of the Tools of the Faction. Many of the Friends of Government have been turned out; Many have declined serving; the few who will be in the House will be only Spectators. So that the Faction will have everything in their hands."[28]

Bernard's pessimistic prophecy was fulfilled when the legislature assembled. At the very beginning of the session, before choosing the Speaker and clerk, the House appointed two committees, composed of the Whig leaders, to draw up resolutions against meeting under the guns of the troops. The resolutions were brought in at once, ready made beforehand.[29] After transacting that business before they were formally organized, the members chose their officials, and then turned to the election of the Council. The characteristics of those chosen, and incidentally the state of mind of Governor Bernard, can be gathered from the fact that out of the twenty-eight named, he outdid his previous efforts, and negatived eleven.[30]

Bernard, who had been recalled, left the province in July, 1769, and turned over his office to Thomas Hutchinson. By that time the position had become more of an embarrassing liability than a valuable asset. The violent controversies of the preceding years had completely alienated the legislature from the royal governor, and had virtually transferred all real authority from the

[27] Channing & Coolidge, *Barrington-Bernard Corresp.*, p. 197.
[28] *Ibid.*, 203-205.
[29] *Mass. H. Journal*, May 31, 1769, pp. 5-7.
[30] *Ibid.*, p. 9.

executive to the General Court. Partisan bitterness was thus bringing about an important change in the government itself.

Hutchinson retained his post until 1774. When he sailed for England he said that the governor had nothing left but an empty title.[31] It is clear that the colonial administrative system of Great Britain had completely broken down in Massachusetts. While it is difficult to point to specific instances of the assumption by the legislature of the governor's prerogative, nevertheless we have the statements of two retiring executives that all the attributes of authority had passed to the leaders of the assembly. Even the British government took this view of the situation. Hutchinson was succeeded by General Gage, in the capacity of military governor. This appointment is in itself evidence enough that the statements of Bernard and Hutchinson had been taken at their face value. Authorized civil government had come to an end, and the instrument responsible for the change was the Boston "Junto."

Gage's commission marked the end of all pretense of coöperation between colony and home government. Events moved rapidly after he attempted to take charge, and in October, 1774, the first Provincial Congress met in Massachusetts. The *de facto* government established was on the surface very different from the system provided for in the charter. The governor and council were dropped, and executive authority was vested in or assumed by a committee of safety, composed of the leading members of the Congress. In reality, however, no sudden or abrupt change had taken place, because the evidence shows that the charter had been virtually superseded before 1774. The Provincial Congress was merely the House of Representatives under a new name, and

[31] Hutchinson, *Hist. of Mass.*, III, 455.

the committee was the "Junto." The revolutionary government had gradually grown up within the old, and in due time supplanted it; its acceptance was simply the recognition of an accomplished fact. In the process of transition from colony to state, the party organization in the legislature was the most effective and important, as well as the most conspicuous factor.

In Virginia a similar development was taking place, and the process of stripping power from the governor was not so very different from that just described in Massachusetts. In 1754, when trouble with the French and Indians seemed imminent, Governor Dinwiddie did his utmost to arouse in the legislature an appreciation of the seriousness of the approaching crisis, and to induce the members to provide funds and troops for an active campaign. His endeavors to secure appropriations were constantly thwarted by the opposition in the House, and it appears that this opposition was directed by a committee very much like the "Junto" in Massachusetts. On January 14, 1754, the assembly met, but to Dinwiddie's distress they were "very much in a Republican way of thinking," so that they did "not act in a proper Constitutional way. . . ." Finally, "with great Perswasions, many Argum'ts and much Trouble, they were prevail'd on to vote 10000£ for protecting our Frontiers; That Bill was so clogg'd with unreasonable regulat's and Encroachm'ts on the Prerogative, that I, by no means, w'd have given my assent to it if His My's Service had not immediately call'd for a Supply to support the Expedt. I have in view, to support His My's just rights to the Lands on the Ohio. They plead Precedents in raising money in this Method, w'ch I found was so in my Predecessor's Time. . . . This I urg'd sh'd not be a Precd't as it's contrary to His My's Int't, however, as the Exigency of the pres't Affair c'd not be

Otherways supplied, I was oblig'd to submit, and for that reason I hope I shall stand excused.''[32] The heinous sin which the Burgesses committed, in the governor's eyes, was the addition to this bill of a clause which gave authority over the expenditure of the money appropriated to a committee named in the bill. ''This Bill,'' wrote Dinwiddie later on, ''takes from me the undoubted right I have of directing the Applicat'n of the Money rais'd for the Defense of the Dom'n. . . .''[33]

This determination of the House to restrict the power of the governor was brought into prominence again, when the members attempted to prevent Dinwiddie from collecting a fee of one pistole for signing and sealing land patents. The Burgesses protested against the fee, and the governor replied to the effect that his instructions had authorized the collection of the fee. This was a serious matter to the House, and the members planned to carry the dispute before the home government. For this purpose they appointed Peyton Randolph as their agent, and voted to pay him £2,500. The Treasurer was ordered to make this payment, even though the governor and Council should refuse their assent. Robinson, who served in the dual capacity of Speaker and Treasurer, declared that he would make the payment if the House authorized him to do so, but at the last moment his courage failed him. Finally the favorite colonial device of a rider was adopted. The governor wanted £20,000 more for military purposes. To a bill making the desired appropriation, the House attached a clause authorizing the payment to Randolph.[34] Dinwiddie declared that the use of the rider was unconstitutional, and rather than accept defeat in this case, he prorogued the legislature

[32] *Dinwiddie Papers,* I, 98, 100.

[33] *Ibid.,* I, 156.

[34] Dinwiddie's story of this affair is told in a series of letters, *Dinwiddie Papers,* I, 44-47, 140-141, 160-161, 298-301, 307.

without getting his money. He wrote to Abercrombie that "There is such a Party and Spirit of Opposition in the lower Ho. y't it's not in the Power of the Gov'r to suppress, unless he is to prostitute the rules of Gov't, and act inconsistent with his Instruct's. I have really gone thorow monstrous fatigues, w'ch I sh'd not much regard if I c'd answer the Com'ds of His M'y, but such wrong headed People (I thank God) I never had to do with before."[35]

After this outburst of righteous indignation, Dinwiddie waited until the following year before he made any further requests upon the House of Burgesses. The recess, however, had soured rather than sweetened the tempers of the members. The discouraged executive wrote that "Our Assembly met the 29th Ult'o, but not above one-half of them gave their Attendance. They fell into Cabals . . . They further propos'd a Secret Committee, w'ch in course w'd have been the Beginning of great Dissentions. They were likewise very mutinous and unmannerly." Dinwiddie thereupon dissolved them, and took the chance of an improvement after a new election. At least, he wrote, the new House "cannot be as bad as the last."[36]

Dinwiddie's complaints serve to bring out some of the characteristics of the House of Burgesses and its internal organization. The "Secret Committee" which he referred to was probably not unlike the "Junto" in Massachusetts. Some such organization was evidently guiding the House in its attempts to limit the power of the executive in military and financial affairs. Then as the authority of the House was gradually extended, the importance of the Speaker-treasurer was greatly enhanced. Governor Dobbs of North Carolina even went

[35] *Dinwiddie Papers*, I, 300.
[36] *Ibid.*, II, 273.

so far as to assert that "the Speaker as Treasurer rules the assembly."[37]

An analysis of the standing committee appointments in Virginia brings out the interesting fact that membership in those important groups was largely restricted to the representatives from the tidewater counties. What little evidence there is points to the control of legislative business by a "ring," composed of the conservative planters who really governed Virginia. Robinson's power as Speaker rested partly on his control of finance, and partly on his influence with this inner committee.

It was not only in the large legislatures of Massachusetts and Virginia that there appeared these manifestations of political manipulation. Even in Georgia the assembly was effectively managed by a group opposed to the governor. On one occasion in 1756 the executive tried to put a stop to further proceedings on a certain measure by sending a message to the Speaker ordering him to adjourn the House. After the manner of colonial legislatures, that body showed nothing but contempt for his command. The Speaker's report of the episode is an illuminating commentary on colonial legislative methods. The governor sent in his message at "about Elleven of the Clock in the forenoon. . . . As I took hold of it and was going to rise it was seized in my hand by one of the Members who said that I should not get it or should not read it or Words to that Effect. I strugled for it, for some time but was Obliged to Yield it Otherwise it would have been torn I then stood up and declared that I thought I had no right to set there as I was firmly persuaded the House was adjourned and that nothing that could be done after that would be deem'd Valid and therefore would leave the Chair then all or most of them arose up and said they would Oblige me to keep the Chair

[37] *N. C. Col. Recs.*, V, 949.

that I had no right to leave it without the consent of the House, That the House was not or could not be adjourned untill the Message was given at the Clerks table Read by him and then adjourned by the Speaker that they would set and Oblige me to set untill Twelve of the Clock at night if the Business that was then on hand was not finished before Many times afterwards I rose in order to leave the chair and told them over and over that I could not set or Act longer that we was no sitting Assembly that every thing must be void that we did, but was always Obliged to set down again They appointed Several Committees I refused to chuse the Members they chuse them themselves They did Several other Things but I had no hand in them I kept silent, They read and past a paper to address to his Excellency and offer'd it to me to sign which I absolutely refused (as I thought the Assembly was adjourned) But they told me in a Commanding and Peremptory manner Sir you shall sign it we will Oblige you to sign it you have no Right Sir to refuse to sign anything that passes this House I again told them I did not look upon this as a House at present but all I could say was to no purpose I was Obliged to sign it tho' I Publickly declare at the same time that I was forced to do it that it was intirely Contrary to my inclinations.''[38]

The material outlined in this chapter bears out the statement already made, to the effect that there always are two types of organization in the average legislature: the official, and the informal. The one looks after routine work connected with legislative operations proper, while the other decides what business shall be transacted in any given session. Both forms are necessary, but the more important is the party machine. Without such leadership the assemblies would degenerate into mere

[38] *Ga. Col. Recs.*, XIII, 100-101.

debating contests, with no power of constructive action. Undoubtedly a minute study of any colonial legislature would yield results similar to those described here. In at least two colonies, New York and North Carolina, the power of the party committees was even greater than in Massachusetts or Virginia, and the leaders in the legislatures were actually transacting considerable business that really belonged to the executive.

NOTE TO CHAPTER TWO

The following list of committees on important subjects appointed in the House of Representatives in 1766-1767 shows how business was controlled by the Boston members and a few other active Whigs. The names of the Boston members are in capitals, and those of their party associates in italic.

1766

May 29. On the governor's speech: CUSHING, OTIS, ADAMS, *Partridge, Hawley, Saunders, Dexter.*

June 3. On the governor's message: CUSHING, OTIS, ADAMS, *Hawley, Partridge, Bowers.*

June 4. To thank the king for the repeal of the Stamp Act: CUSHING, Worthington, OTIS, ADAMS, *Partridge, Dexter, Bourne.*

June 10. To write to the agent, defending the course of Massachusetts during the Stamp Act agitation: CUSHING, ADAMS, OTIS, *Hawley, Partridge.*

June 11. To make arrangements for opening the debates in the House to the public: HANCOCK, OTIS, ADAMS.

June 24. To reply to the governor with reference to an indemnity for those who had suffered in the Stamp Act riots: CUSHING, ADAMS, *Dexter, Saunders,* Richmond.

October 30. To report on the legality of the act of the governor in causing certain Acts of Parliament to be printed in the province law book: *Sheaffe,* OTIS, *Dexter.*

October 30. On certain proclamations of the governor: CUSHING, OTIS, HANCOCK, *Sheaffe, Dexter.*

October 31. On the governor's speech, regarding indemnity: CUSHING, OTIS, *Hawley, Dexter,* HANCOCK, *Sheaffe, Bowers.*

November 5. To reply to the governor's speech: *Hawley, Dexter, Bowers,* ADAMS, Johnson.

To report on certain acts of the customs officials: OTIS, *Dexter, Hancock.*

November 6. To frame the indemnity bill: CUSHING, *Hawley,* OTIS, Ruggles (an active Hutchinson man), *Dexter,* Dwight, *Sheaffe.*

November 13. To report on trade: CUSHING, OTIS, HANCOCK, ADAMS, *Sheaffe, Dexter,* Brown, Hall, Boardman.

On letter from Shelburne: CUSHING, OTIS, HANCOCK, Brown, ADAMS.

December 5. On resolutions regarding the indemnity bill: *Hawley*, OTIS, ADAMS.

December 7. On trade: CUSHING, *Bourne, Sheaffe*, Greenleaf, Brown, Foster, *Warren*.

December 9. On royal troops: CUSHING, OTIS, *Sheaffe*, ADAMS, *Dexter*.

1767

February 3. On the governor's message regarding royal troops: CUSHING, OTIS, *Hawley, Sheaffe*, ADAMS, *Dexter*, Ward.

February 13. On the governor's message regarding the agent's salary: OTIS, Sheaffe, *Dexter*, ADAMS, *Warren*.

February 27. On the governor's message regarding Newfoundland fisheries: OTIS, ADAMS, Ward, *Bowers, Gerrish*.

March 3. To write to the agent regarding Hutchinson's attempt to sit in the Council after he had been dropped from that body: *Hawley*, OTIS, ADAMS, *Sheaffe, Bowers*.

March 18. To write to the agent: ADAMS, *Dexter*, Ruggles.

CHAPTER III

THE "JUNTO" IN NEW YORK AND NORTH CAROLINA

In the history of these colonial assemblies two facts stand out very clearly: first, the lower house was almost constantly engaged in a more or less serious controversy with the executive; second, in the assembly there developed a form of unofficial organization more important than that provided for by the rules. This condition of friction tended to become chronic, and as a result the party committee became more and more powerful. At first it was nothing but a check on the governor; it might bring the wheels of government to a standstill, but it had not acquired very much positive authority. A deadlock in government, however, cannot last indefinitely; one party or the other will eventually get the upper hand, and in this case the legislature proved to be the victor. As time went on the popular branch of the government began to rise above the executive, and to dominate it. The governor's hands were tied, and then some of his power was taken over by the assembly. By controlling the salaries of colonial officials, and by dictating certain appointments, the lower house acquired considerable influence in administrative affairs. But executive business cannot well be handled by the whole legislature, so the "Junto," which had long been the directing force in legislative work, took charge of these new duties. When a committee of prominent assemblymen makes up the legislative program and also supervises and controls the

executive, the resulting form of government is closely akin to the parliamentary system of England.

In New York the "Junto" developed early, and even before 1750 it had become so conspicuous and so influential that the governor was thoroughly alarmed. In 1747 Clinton sent to the Board of Trade a detailed description of the government of the colony as it was actually carried on. According to him, a certain Mr. Horsmanden was a "principal Actor in the Faction, that had been formed in the Province to distress the Governor and to gain the administration both, Civil and Military into their own hands." Concrete evidence of the power of this "Faction" is to be found in "the constant meeting of a Committee of the Council and Assembly, who never made any report of their proceedings, tho' the resolutions of both, Council and Assembly were directed by them. . . ." Mr. Horsmanden was a member of this committee, and drew up most of the papers prepared by it. In working out its plans, the "Faction" tried to curtail all supplies, and in addition it influenced the Assembly to place all public funds at the disposal of their own "Dependants," so that the governor might be deprived of all power over expenditures. More important still, they had induced the Assembly to assume full control of the appointment of administrative officials, and of the payment of their salaries. The governor was not even consulted in these matters.[1]

A careful analysis of the situation as described in this report shows that the "Faction" was more than a petty political machine. It was actually the directing force in the government. Party leaders in the legislature were trying, with considerable success, to extend their power over the executive department.

[1] *N. Y. Col. Docs.*, VI, 670-671, September, 1747, abstract of evidence in the books of the Board of Trade.

References to the aims, operations, and successes of the "Faction" appear in later letters of the governors. In 1751, Clinton wrote to the Board of Trade that "the Faction in this Province continue resolute in pursuing their scheme of assuming the whole executive powers into their hands, and that they are willing to risk the ruin of their country, in order to carry out their purposes."[2] Colden reported practically the same situation in 1765.[3]

As the leaders in this attack upon the governor gained more experience, their methods became more systematic and effective. Money was granted and paid out under the authority of the Speaker of the Assembly instead of the governor. Salaries of royal officials were pared down, while the adherents of the "Faction" were liberally rewarded for their loyalty.[4]

This assumption of financial power by the Speaker was a perfectly natural result of the increasing importance of the Assembly. Formerly, and legally, payments were made under authority of the governor's warrant. With the popular branch of the legislature in control of finance, however, it was to be expected that the official leader of that body would act as its agent in making payments. The Speaker was not exactly the Chancellor of the Exchequer, but it would have taken only a few more years of uninterrupted development to have placed him in such a position.

By 1766 financial operations had become so well systematized that Colden could make the following explicit statement: "The ruleing Faction gain an absolute influence over the officers of Government by the Sallary of every officer being every year voted or appointed by

[2] *N. Y. Col. Docs.*, VI, 751, 752.
[3] *Ibid.*, VII, 705-706.
[4] *Ibid.*, VI, 764-765.

the Assembly, lessened or encreased, or refused, as they like the Man in office, and the Fund is yearly raised & applied for that purpose."[5] It does not require very much imagination to guess how this power would affect the administrative system in general, and the governor's position in it in particular.

Colden likewise sent to England a report in which he described the component parts of this powerful political organization. He said in the first place that there were four different groups or social classes in the colony: the proprietors of the large estates, the lawyers, the merchants, and the small farmers and mechanics. The first two groups, he wrote, were closely affiliated through family ties. Then he went on to explain how the lawyers were able to dominate the legislature. "The Gentlemen of the Law some years since entered into an association with intention among other things to assume the direction of Government by the influence they had in the Assembly, gained by their family connections and by the profession of the Law, whereby they are unavoidably in the secrets of many Families—many Court their Friendship, & all dread their hatred. By this means, tho' few of them are Members, they rule the House of Assembly in all Matters of Importance. The greatest number of the Assembly being Common Farmers who know little either of Men or Things are easily deluded & seduced."

"By this association, united in interest & family Connections with the proprietors of the great Tracts of Land, a Domination of Lawyers was formed in this Province, which for some years past has been too strong for the Executive powers of Government."[6]

These quotations suggest the conclusion that the

[5] Colden, *Letters*, II, 90.
[6] *Ibid.*, II, 68-78.

"Faction," or unofficial legislative committee, was really a Cabinet in a small way. It certainly impressed its policies on the legislature, and if Clinton and Colden can be trusted, it had contrived not only to control the administration, but also to make the officials responsible and subservient to itself. It is perfectly evident that the system of government was very different from anything provided for by charter, and also wholly unlike the state governments established after the Revolution. The real significance of this development was, however, not apparent to the constitution makers of the latter part of the eighteenth century.

Another excellent example of government by "Junto" is to be found in North Carolina. In that colony the strife between executive and legislature had been even more bitter than in New York, and the popular branch as usual got the better of the governors. Methods of political manipulation had reached a highly developed stage there, and the leaders of the House would compare favorably with the expert managers in New York. In this case, too, there was something more than mere machine control; a new type of government was taking shape, the distinguishing feature of which was the supremacy of the majority leaders in the legislature.

In 1757 the "Junto" in North Carolina was directed by four members of the Council, who entered into a gentlemen's agreement to work together. Because of the small size of the upper house, four men acting in common could easily secure control. To get the necessary support in the lower house, they allied themselves with the fairly compact following of John Starkey, one of the Treasurers. He had taken upon himself the responsibility of paying the members their salaries, and like a good politician he made the most of his opportunities. By judiciously advancing money or delaying payment,

according to the nature of the individual case, he contrived to put enough members under obligation to himself so that he could be sure of their votes when wanted. As Governor Dobbs wrote, he could use his power as he pleased, "so that all the low members who want a supply follow him like chickens so that he sways the House against the most sensible members in it."[7] Murray, one of the four councillors, drafted bills for this aggregation. When their measures happened to be of such a nature that they were assured of the governor's veto in advance, they were attached to revenue bills, in the shape of riders. Thus if their favorite measures were defeated, they at least had the satisfaction of blocking the plans of others.[8]

In North Carolina the "Junto" had become so firmly established that its continued existence was not dependent upon any particular group of members. On the contrary, it had grown into a permanent institution, which continued to live on in spite of changes in personnel. In 1760 the legislature was dominated by a group of lawyers, whose object at that particular time was to get control of the new superior court. Child, the attorney-general, secured a following by promising rewards to influential members in both chambers. To Samuel Swann he promised one of the justiceships in the court to be created. Swann approved of the plan, whereupon he was put in as Speaker of the House. Then the "Junto" framed a bill for establishing a superior court, in which they imposed such ingenious restrictions for the judicial positions that only three men could qualify: Speaker Swann, Barker, and Jones, all intimate friends of Child, the chief operator. In order to make sure of the governor's assent, the "Junto" refused to

[7] *N. C. Col. Recs.*, V, 945-954.
[8] *Ibid.*, VI, 40-41.

pass any revenue bill until the court bill had been approved. Thus at one stroke the "Junto" was depriving the governor of his appointing power, and also extending its power over the court.[9]

In the fall session of the same year the organization again differed slightly in membership, but the methods used were very much the same. In this instance the controlling committee was composed of Samuel Swann, the Speaker, his brother John in the Council, and Starkey, the Treasurer. The chief issue was the choice of a new colonial agent, and the "Junto" was anxious to dictate the appointment. To guard against mishaps they inserted in the tax bill a clause which would give the position to their candidate. In the meantime, a new Treasurer was to be appointed, for the northern district, and the bill for that purpose was kept back until the leaders in the House could learn how the Council voted on the tax bill, with its agent rider. It was understood that if Rieusset, a councillor, voted favorably, he would receive the office of Treasurer by way of reward. With his vote the tax bill passed the Council by a bare majority of one, whereupon his name, according to agreement, was inserted in the bill for appointing the treasurer.[10]

The power of the "Junto" in the legislature was partly secured through the control of the standing committees; in fact, they became mere instruments in the hands of the leaders, by means of which their authority could be

[9] *N. C. Col. Recs.*, VI, 243-251. Dobbs to the Board of Trade. The *Journal of the House* indicates that Dobbs was telling the truth. The committee which framed the court bill was composed of Dewey, Child himself, and Barker, one of the three who hoped to profit by the bill. Dewey was apparently the lawyer referred to in Dobbs' letter, p. 245, although it is not clear whether he was one of the "Junto" or not. VI, 367. Jones, Barker, and Starkey, all members of the "Junto," formed the committee which framed the tax bill. VI, 392, 396.

[10] *N. C. Col. Recs.*, VI, 319-324; *cf. House Journal* in same volume. Tax bill brought in November 17, passed third reading November 26; bill for appointing the treasurer brought in November 29, pp. 479, 497, 502.

more conveniently exercised. In 1760 the committees on elections and on grievances were composed of the friends of the "Junto," together with a few others who had been put on to save appearances, and the proceedings in the committee of grievances were kept secret.[11] Moreover, the standing committees of accounts and claims were completely controlled by the House, and therefore by the "Junto." The House usually appointed so many members to these joint committees that the Council could not hope to get an even representation.[12]

This form of government seems to have been firmly established in North Carolina, for as late as 1773 Governor Martin complained of the very same thing, although in language more uncomplimentary than any ever used by the gentle Dobbs. He asserted that the North Carolina House consisted, for the most part, "of men in the lowest state of ignorance, that are gulled into absurdities by a few artful and designing men, influenced by selfish and interested motives, who lead them implicitly into their views by representing every salutary proposition of Government as injurious and oppressive . . . ; the poor misguided herd renounce out of the House the sentiments they have but the moment before blindly concurred in . . ." Again he refers to "the few mischievous, but too successful Demagogues who have hitherto governed the Assembly. . . ."[13]

The "Junto" was the natural, inevitable product of an extended controversy between representatives of two different sources of authority. The causes of this quarrel are fairly evident. Friction would be sure to arise between the two powers, popular and royal. Colonial political leaders did not permit imperial problems to

[11] *N. C. Col. Recs.*, VI, 243-251.

[12] *Ibid.*, VI, 319-324. For the committee appointments see *ibid.*, V, 1043, VII, 345.

[13] *Ibid.*, IX, 698-699.

weigh very heavily upon their minds, and their point of view was naturally somewhat provincial. With that supreme self-confidence so characteristic of the new world they felt that they were perfectly competent to attend to their own affairs, and they viewed with suspicion the attempts of the royal governors to obey instructions from across the water. Their problems were local, and if their interests sometimes conflicted with imperial policy, so much the worse for the empire. If new administrative measures or new revenue laws seemed likely to have an unfavorable effect upon their comfort or material prosperity, they could be depended upon to protest with vehemence if not with actual violence.

In addition to those weightier causes of difference, personal rivalry and ambition played no inconsiderable part in generating friction. Then as now aspiring politicians were always on the lookout for issues by means of which they might rise to positions of prominence. To be sure there were opportunities for advancement in the king's service, as the careers of Hutchinson and the Olivers in Massachusetts clearly prove. But royal appointments were relatively scarce, and rotation in office was not an approved policy in those days. Jefferson's disconsolate complaint concerning officers in the civil service, that few die and none resign, would have been applicable to the colonial administrative system. Then, too, even the available places were not always open to those ambitious but obscure young men who happened to be without wealth, social standing, and influence in high places. It was to men of this type that the lower house of the assembly particularly appealed. The leader of the party opposed to the administration might become just as prominent and fully as powerful as the governor

himself, and in addition he would be entirely free from any embarrassing obligations to crown appointees.

As the champion of local interests, the popular branch of the assembly naturally assumed the leadership in opposing the governor. In a way the aggressive activity of this body was both a cause and a result of the political friction. It was constantly trying to restrict the field of executive action, while at the same time it was carried on to positions of greater prominence by the rising tide of the struggle. This steady advance of the lower house is one of the most important facts in colonial history of the eighteenth century, as well as one of the important causes of the American Revolution. By 1760 it had gotten into the habit of going its own way, and of doing very much as it pleased, with little or no regard for the advice or the recommendations sent down by the executive.

It seems fairly evident now that the royal regulations and plans for colonial government are very unsafe guides in a study of the systems actually in operation. Theoretically no change had taken place since the establishment of the royal colonies, but the form alone was left. In practice the governor had really ceased to be the head of the executive department. If his recommendations were not treated with open contempt, they were silently ignored, and his authority in administrative circles had almost disappeared. When he vainly tried to oppose the legislature in its attacks upon his prerogative, he was subjected to the additional and intensely real inconvenience of going without his salary.

In brief, the assembly and the governor fought it out, to determine where ultimate authority resided, and the assembly won. That meant a transfer of power from the representative of the prerogative to the popular house. That body itself was too clumsy to perform the

duties which it had seized. Some device was needed which could guide it in its deliberations and control it in its action, and at the same time look after matters of finance and administration. These obligations were assumed by the leaders of the majority, the very ones who were instrumental in building up the power of the house at the governor's expense. As a result the line of demarcation between the three branches of government almost disappeared, and the control of all departments was virtually taken over by a powerful legislative committee.

The gradual growth of this extra-legal, unauthorized form of government in the British colonies takes on a new significance when compared with constitutional development in England. Similar forces produced the Cabinet in one place, and the "Junto" in another. After the kings had been rendered powerless, Parliament, particularly the House of Commons, found itself saddled with new obligations, for the proper performance of which no machinery existed. After winning their victories the leaders in the House of Commons naturally assumed these new burdens. They had really acquired control of the government, and they forced the king to recognize that fact by making them his ministers of state.

In England the system which had been forced into existence by the constitutional conflict was welded into permanent form by the peculiar conditions of the first half of the eighteenth century. Because of his inability to speak English on the one hand, and his gratitude to the Whigs on the other, George I was perfectly willing to make the party chieftains his ministers, and to turn over to them the handling of governmental problems which he could never understand. Even then the Cabinet system rested on nothing but a customary basis, and

it was not until some years after this that the full significance of the new régime was made clear.

In the colonies this trend in the direction of parliamentary government had not made as much progress as it had in England. Then the Revolution altered the course of institutional development, and with one or two exceptions put an end to further growth of this kind. The change came about largely because the conditions responsible for the exaltation of the legislature at executive expense had generally disappeared. Royal prerogative had no longer to be reckoned with, and executive and legislature both derived their authority from the same source. Dangerous friction was therefore not likely to arise. Equally important was the fact that the revolutionary leaders had even less comprehension of the true nature of colonial government than contemporary Englishmen had of the Cabinet system. Americans were inclined to look upon the "Junto" as an ugly outgrowth of disreputable politics, and they justified its use merely because it seemed to be the only available weapon of defense against the exercise of unjust power. They never realized that as an organ of government it might have tremendous advantages simply because it was a perfectly natural development.

CHAPTER IV

COMMITTEE DEVELOPMENT, 1776-1790

The years during and immediately after the Revolution were characterized by a really extraordinary activity in constitution making. By 1789 there were in operation the new fundamental laws drafted by eleven out of thirteen states, together with the Federal Constitution. To this list should be added the Articles of Confederation, in effect up to 1789. The constitutions are interesting, not for their originality, but for the general uniformity of their provisions. They differed only slightly from each other, and the forms of government which they provided were, *mutatis mutandis,* very much like the regular colonial systems. The Revolution did not cause a general breaking away from past governmental traditions. People had been fairly well satisfied with their institutions as a whole, and they fought, not to alter those systems, but to put an end to what they regarded as unjust meddling with them.

After taking steps to protect themselves against outside interference in their affairs, it is not surprising that Americans fell back upon familiar precedents in making the needed adjustments to changed conditions.[1] It should be pointed out, however, that the new constitutions had far more in common with colonial polity as it

[1] For a more detailed comparison of the colonial systems of government with the new constitutions, see Morey, "The First State Constitutions," in *Annals of the American Academy of Political and Social Science,* IV, 201-232. "In their new constitutional enactments there was shown a marked degree of conservatism, changes being made only to the extent necessary to bring the new governments into harmony with republican ideas, without violating too much the recognized traditions of the colonies," p. 219.

was on paper than with the system of which the "Junto" was the central figure. In spite of a reputation for hard-headed practicality, and also in spite of the fact that both professional politicians and ordinary voters must have done considerably more thinking about the external form of their government than they are wont to do, it appears that the constitution makers did not take into account, or at least did not analyze very carefully, the real significance of that striking discrepancy between governmental theory and practice before the war. The rise of the "Junto" was accompanied by the practical overthrow of the regular systems, and yet the possible bearing of this development upon the operation of the new constitutions seems hardly to have been considered. The "Junto" must have been thought of, not as a normal, rational institution, which had come into existence to meet certain needs, but rather as the pathological product of a diseased body politic. Certain it is that not one of the constitutions was built up around the principal that a powerful legislative committee should control all branches of the government.

The most important change in the situation of the Americans, that which made the people, or rather the voters, the ultimate authority, had been brought about by the war. As a result, the powers of the government itself were no longer derived from two different sources. The executive department, formerly the mainstay of the prerogative, was set off from the legislature in accordance with the current theory of the separation of powers, although in many cases the governor was subject to the control of the assembly.[2] Then the upper house, which had formerly been a part of the royal system, was made

[2] Channing, *Hist. of U. S.*, III, 459; in the New England States the governor was elected by the voters; in New York by £100 freeholders; in Pennsylvania, by the Council; elsewhere by the legislature.

elective.[3] Theoretically the governors of the states had less authority than their colonial predecessors, but the British appointees had rarely measured up to the stature of the abstract executive of the charter. Actually the new chief magistrates enjoyed just as much, and in some cases far more, real power than had been wielded in earlier days.

These alterations, which affected the executive and upper house so slightly, hardly touched the lower house at all.[4] The nature and functions of this particular institution had been well understood in colonial times, so that few changes were required. Theoretically perhaps these popular branches had more power than the corresponding bodies had enjoyed on paper before 1775; actually they were probably possessed of less real authority and influence than those assemblies which governed the colonies before the Revolution.[5]

For a brief period after the outbreak of the Revolution the internal structure of the legislatures remained almost without change. The forms of procedure and organiza-

[3] Morey, *op. cit.*, pp. 221-223.

[4] *Ibid.*, p. 220. "In the organization of the Lower House, which had always been the most republican branch of the colonial government, there were few changes to make, except to give clearer definitions to its structure and functions. The lower house, as organized in the first state Constitutions, was thus a continuation of the lower house which already existed in the colonies. . . ."

[5] The most important change at first was in size.

	Before 1776	*After 1776*
N. H.	30.	75. (1776) 90 (1784)
Mass.	100.	200. (1776) 200)1785)
R. I.	40.	140.
Conn.	No change.	
N. Y.	30.	60.
N. J.	30.	30.
Penn.	36.	70. (1776) 60 (1790)
Md.	41.	
Va.	125.	160. (1790)
N. C.	No change.	
S. C.	50.	200.
Ga.	15.	66. (1782)

tion had been worked out in colonial times by the local authorities, unhindered by royal interference or control, and because these methods had been generally satisfactory, they were taken over by the new state legislatures. Lawmaking machinery, however, never stays put for any great length of time, and even though they withstood the great upheaval of the Revolution, the legislatures were forced to work out new methods because of the pressure of new business and new problems. The war had thrust weighty and troublesome burdens upon the assemblies, and the return of peace served rather to increase than diminish their perplexities. There were claims to be investigated, accounts to be settled, taxes to be raised—from a people who had just fought a long war partly at least to escape such obligations, and commercial arrangements to be agreed upon between the states themselves and with foreign powers. In short, new issues thrust themselves forward, and to give them adequate attention the assemblies were forced to revise and elaborate their procedure. Not all the legislatures were affected in the same way, and each worked out its salvation according to its own light, but in spite of minor divergencies, the developments reveal a surprising uniformity. The changes consisted partly in further growth along lines marked out before the war, and partly in a broadening of the scope of committee activity.

Probably the greatest defect in procedure in the average colonial assembly had been the want of time-saving schemes for dealing with petitions. Except in Virginia they were customarily referred to small select committees, and for a few years after the war the old circuitous method was continued. As time went on, however, the legislatures began to appoint standing committees for this work, and in that way the foundations of more extensive standing committee systems were laid.

Even in New Hampshire, where they were almost unknown, standing committees were used for a time to clear up the large amount of legislative work left by the war. When fifty or more petitions were presented in a session of only three weeks in length, a new method of handling them was obviously needed.[6] As early as 1777 a joint standing committee was appointed to consider all petitions and applications for compensation from soldiers who had met with losses in the war.[7] Although these committees did not become permanent parts of the organization, there were times when large amounts of work necessitated the appointment of committees for a single session. In 1785, two standing committees were appointed, one on the petitions of sick and wounded soldiers, and the other on those of selectmen regarding town affairs.[8] But for some reason the New Hampshire assembly avoided such committees as a matter of general practice, and no more on petitions were appointed before 1790. In 1789 several members who were fully aware of the value of the device made a determined attempt to have created a regular standing committee on petitions. According to the proposal which they made, all applications of that kind were to be referred for consideration to a joint committee, which should determine whether or not they were of sufficient importance to warrant further attention. Rejection of a petition by this committee would prevent its receiving any more attention in the House. The measure was lost, by a vote of thirty to twenty-two, and New Hampshire continued to refer her petitions to separate select committees.[9]

In Massachusetts, on the other hand, where the stand-

[6] *N. H. State Papers,* XX, 413 *et seq.,* session from October 20-November 11, 1785, fifty petitions were presented.

[7] *N. H. Province Papers,* VIII, 514.

[8] *N. H. State Papers,* XX, 344, 346.

[9] *Ibid.,* XXI, 672.

ing committee idea had taken root before the war, a fairly elaborate system had developed by 1790. In 1777 standing committees were appointed to examine muster rolls, accounts, and petitions relating to the sale of land.[10] By 1781 the group was enlarged to six, but the legislature hesitated to commit itself to a permanent adoption of the scheme. In 1785 a committee appointed to consider what standing committees were needed, reported "that it was not expedient to appoint any" for that term, and the House adopted the recommendation, apparently without discussion.[11] The amount of work had not fallen off, but New England in general was skeptical on that subject. The experience of getting along without them, however, must have furnished excellent arguments for their re-establishment, for in 1788 the General Court of Massachusetts had a group of eight. Most of these were appointed to handle petitions. There were committees on petitions regarding the sale of land, abatement of taxes, incorporation of new towns, new trials, and fishing in certain rivers; then there was one on accounts, one on finance, and still another on the encouragement of "arts, agriculture and manufactures."[12] By this time it was becoming the regular custom to refer all petitions relating to one subject to a single committee.

Massachusetts and New Hampshire represent the two extremes of this phase of committee growth. Similar developments were taking place at the same time in other states, more extensive than that in New Hampshire, and generally less so than in Massachusetts. Sometimes there would be two or three such committees on petitions,

[10] *Mass. H. Journal,* May 30, June 2, 1777, pp. 8, 10.

[11] *Ibid.,* May 30, 1785, p. 34.

[12] *Ibid.,* May 31, June 3, 1788, pp. 31-33, 44. This list remained practically constant for the next few years. In 1789 a new one, on the naturalization of aliens, was created, June 1, 1789, p. 49. These committees were all joint.

sometimes only one. But whether the groups of standing committees were large or small, they were all manifestations of this general movement, common throughout the United States, toward a more efficient method of transacting legislative business.[13]

In addition to this work on petitions, many of the state legislatures took upon themselves the task of auditing and passing upon the numerous accounts presented. These included bills of individuals for supplies furnished to the state, or for services performed, such as public printing, caring for wounded soldiers and the states' poor, or transporting goods for the army. In any well organized government such matters would naturally be

[13] There were no standing committees in Rhode Island and Connecticut.

In New York the grand committees were changed into small standing committees, and to a certain extent they became active in this work on petitions. *N. Y. H. Journal,* August 25, 1779, p. 6; March 7, 1786, p. 71; February 12, 1787, p. 44; July 7, 1789, p. 7. The committee on trade had been dropped.

New Jersey had no standing committee on petitions.

In Pennsylvania no new committees were appointed for this particular kind of work, but the committee on grievances handled petitions. *Pa. H. Journal,* February 26, 1779, p. 323; December 12, 1780, p. 550.

In Maryland the committee on grievances continued to handle petitions. *Md. H. Journal,* November 13, 1782, p. 5; January 12, 1786, p. 94. Occasionally a standing committee on all private petitions would be named; *op. cit.,* November 14, 1782, p. 6. A new committee on trade and manufactures handled some petitions; *op. cit.,* November 30, 1781, p. 19; November 29, 1785, p. 27.

In Virginia the old committees were retained, but petitions regarding land titles and probate matters were referred to the committee on courts of justice, so that the committee on propositions and grievances was relieved of some of its work. *Va. H. of Del. Journal,* 1785, pp. 12, 20, 29, 38, 57.

In North Carolina a joint committee on propositions and grievances was created in 1781, and was regularly appointed thereafter. It handled nearly all the general petitions. *N. C. State Recs.,* XVII, 797.

In South Carolina from 1787 on there were some standing committees on petitions; on grievances, *S. C. H. Journal,* January 29, 1787, p. 31; on religion, *ibid.,* January 30, 1787, pp. 35, 36; on public roads, bridges, etc., *ibid.,* January 13, 1791, p. 18; on courts of justice, *ibid.,* pp. 18-19.

In Georgia there was one standing committee on petitions. *Ga. Revol. Recs.,* III, 18.

referred for verification to officials of the Treasury department, but in 1780 the lower house preferred to keep the closest possible oversight of all financial transactions. Such accounts were at first referred to select committees, as petitions had been, but before long standing committees were appointed to look after the work. The sanction of the committee was necessary before an account could be paid. Naturally the committee was busy, so busy in fact that arrangements had to be made which almost changed its character from a legislative committee to an administrative board. In Massachusetts and New Jersey, for example, the members of the committee received extra pay for their services, and in New Jersey a permanent official who was not a member of the House at all was appointed to serve on the committee.[14] While not quite as common as committees on petitions, committees on accounts were to be found in many state legislatures.[15]

Standing committees on petitions and accounts had not been unknown in the colonial legislatures, and this increase in their use simply indicates further develop-

[14] *Journal Mass. H. of R.,* May 30, 1778, p. 11; June 12, 1778, p. 26. The members of this committee received thirty shillings a day that year.

N. J. H. Journal, December 12, 1778, p. 63; June 12, 1779, pp. 147-148.

[15] In New Hampshire, after the state government was reorganized in 1784, the committee on accounts was dropped, but there was one before that date; *N. H. Prov. Papers,* VIII, 82-83, 433-434.

In Massachusetts the committee was in use up to 1790; *Mass. H. Journal,* July 24, 1775, pp. 9, 46; October 29, p. 208, December 1, pp. 5-6; June 3, 1776, pp. 22; November 17, 1785, p. 301; May 31, 1788, p. 31.

In Connecticut, the "Committee of the Pay-Table" was apparently a board rather than a legislative committee. Force, *Am. Archives,* Series 4, Vol. III, p. 1022; *Conn. H. Journal,* May 27, 1779, p. 21.

New Jersey, *H. Journal,* September 10, 1776, p. 6; October 24, 1787, p. 6.

Pennsylvania, *H. Journal,* November 21, 1777, p. 162; March 16, 1791, p. 266.

Maryland, no committee; the work was probably done by the "Intendant of the Revenue," or by the auditor-general; *H. Journal,* November 13, 1782, p. 6.

ment along familiar lines. Their value in the transaction of routine business was so evident that before long they were appointed to deal with some of the new problems left by the war. Of all the duties which were thrust on the legislatures, perhaps the most difficult as well as the most disagreeable were those connected with public finance. Funds were imperatively needed for both civil and military affairs, and the states were poor, and short of hard money. Politicians of this era were obliged to go slowly in order to retain the good will of their constituents. In their eagerness to get money without unduly burdening the taxpayers, the legislatures at first resorted to the printing press, and practically all the states were flooded with paper money that depreciated almost as fast as it could be issued. To extricate themselves from the entanglements in which this course had involved them, the governments tried to alleviate the evil by receiving old notes in exchange for new, or by drawing up "depreciation tables." All attempts, however, to fix the value of one issue in terms of the next were fruitless, because none of them could be kept at par long enough to serve as a standard.

After the unsatisfactory nature of these makeshift remedies had been clearly demonstrated, the legislatures were compelled to vote taxes, and to call for their payment in real money. Before the war the budget had in general been made up by the governor. His recommendations would be submitted to the assembly, and after discussion in committee of the whole house, taxes would be voted. But after a few years on a depreciated

North Carolina, standing committee up to 1779; after that date the work was done by auditors; *N. C. State Recs.*, XIII, 915, 916; XVI, 21; XIX, 3.

South Carolina, the committee was used in 1784, and thereafter. *S. C. H. Journal*, February 24, 1784, p. 172; February 25, 1786, p. 130; February 2, 1787, p. 49.

Georgia, *Revol. Recs.*, III, 36; 72-73.

paper basis, the financial affairs of the states were so badly involved that no such simple method would answer. Careful investigations and estimates had to be made before the House could act, and in order to get the necessary information committees were appointed. In several of the assemblies by 1790 there were to be found standing committees on ways and means, on finance, or on revenue.

These predecessors of the modern committees of ways and means were coming into general use between 1776 and 1790. Their evolution is both interesting and important, because it shows how the institution could be adapted to new needs. Because there were no colonial precedents to serve as guides, the legislatures tried out numerous experiments, and as a result the records reveal much uncertainty and no little inconsistency with reference to the proper relations between committee and house. For example, the assembly would appoint a committee to "consider so far as is necessary all money matters," and to "report all such measures as they may think expedient to be adopted for providing for the exigencies of Government, and for restoring Public Credit," and then name a second committee to prepare a tax bill, and a third to consider the "expediency" of borrowing money and to report any other feasible schemes for supplying the treasury.[16] It was only by appointing various committees and assigning to them sometimes one kind of work and sometimes several that the ways and means committee was finally developed. It was the result of experimentation, more or less unconscious, which lasted over a period of several years.

In Massachusetts financial affairs were at first re-

[16] *Mass. H. Journal,* June 4, 22, July 1, 1782, pp. 42, 47, 121, 148-149. There was the same uncertainty in New York; *H. Journal,* September 7, 18, 1780, pp. 7, 25; the House first appointed a committee of ways and means, and then a committee to consider means for supplying the treasury.

ferred to select committees, and it was not until after the reorganization of the government in 1780 that the first standing committee of ways and means appeared. In the first session held under the new state constitution, a committee of nine was appointed by ballot to "devise Ways and Means" to supply the treasury, for military purposes and contingent expenses.[17] In order that the committee might have at its disposal all available information, papers from Congress regarding financial matters were referred to it.[18]

The very first reports submitted by the committee reveal the fact that its appointment was one manifestation of the spirit of monetary reform. It attacked the root of the paper money problem at once, and urged the repeal of every act which made bills of credit legal tender. Later it proposed that one-seventh of the "new" money be burned.[19] After working through the December recess, the committee was ready with more recommendations. In order to make the reform as effective as possible, it urged first, a complete reorganization of the treasury department, and then the enactment of a law to insure a punctual collection of taxes.[20] Then, coming down to the actual task of raising money, it laid the budget before the House, so that the members might have before them a concise summary of the amounts needed for both civil and military affairs.[21] In a few additional reports the committee suggested various methods of raising money, and gave estimates of the probable sums that might be realized from these sources, such as, for example, imposts, excise, the sale of public lands, and what not. Among other things a lottery was

17 *Mass. H. Journal,* November 22, 1780, p. 126.
18 *Ibid.,* November 23, 1780, January 3, 1781, pp. 133, 268.
19 *Ibid.,* December 2, 1780, January 15, 1791, pp. 172-173, 214.
20 *Ibid.,* January 26, 1781, pp. 254-255.
21 *Ibid.,* January 9, 1781, p. 196.

recommended, and also a loan of £400,000 to complete the total needed.[22] Of the bills which were drafted to carry some of these measures into effect, the one for the excise and impost taxes was framed by a special select committee, although the rates adopted were those recommended by the committee of ways and means; the general tax bill was drawn by the standing committee itself.[23]

Such proposals involved radical reforms in the whole department of finance, and apparently the committee felt that its plans would be looked upon with disfavor. Feeling called upon to justify themselves in the eyes of their constituents, the members drew up an address to the people at large, describing the actual state of affairs, and setting forth the necessity of some such action as that recommended.[24] Evidently any measure calling for the raising and spending of hard money would be far from acceptable to the ardent lovers of paper.

In thus attempting to restore order in the Treasury department, the House of Representatives in Massachusetts gave this first committee of ways and means authority to make appropriations as well as to raise money, thereby bringing about some degree of unity in the financial transactions of the state.[25] This method, so different from the modern haphazard manner of raising and spending money in the national House, was adopted by the first federal committee of ways and means, and was not abandoned until 1861, when the first committee on appropriations was created. Thus in 1781 in Massachusetts the work of making up the budget, raising money to meet those demands, preparing the tax

[22] *Mass. H. Journal,* January 18, 19, 26, 1781, pp. 230, 233, 254-255.
[23] *Ibid.,* January 19, 23, 26, 1781, pp. 232, 242, 254.
[24] *Ibid.,* January 26, 1781, pp. 254-255.
[25] *Ibid.,* January 26, 1781, pp. 254-255.

bill, and suggesting definite appropriations was all attended to by a single committee.

During the next year, however, instead of one standing committee, there was the usual series of select committees, none of which had any direct connection with any other.[26] In 1782, although a standing committee on finance was appointed, much of the work that should have been referred to it was done by select committees. The standing committee made general suggestions regarding the treasury department, looking toward reform, and it made up the budget, but another committee framed the tax bill, and appropriations were made by the House itself.[27] For the next six years there was no standing committee for financial work. In 1788, however, a committee on finance was appointed, and the next year a committee on revenue. From that time on there seems to have been some sort of a standing committee for finance every year. In 1789, the committee on revenue was appointed to inquire into government expenditures, in order to see whether or not any reductions could be made; to inquire into the amounts of taxes outstanding, and of all other debts due the state; to find out what changes in the revenue laws of the state were made imperative by the new federal tariff law; to inquire into the state of the treasury department and into all state offices which were concerned with state finance; to call on state officials for papers needed to furnish information; to devise means for increasing the public revenue, and to suggest measures for establishing public credit on a firm basis.[28] And yet, in spite of this formidable

[26] *Mass. H. Journal,* September 13, 18, 21, 1781, pp. 189, 212, 231, 232.

[27] *Ibid.,* June 4, 7, 8, 11, 22, July 1, September 30, 1782, pp. 42, 47, 54, 79, 121, 148-149, 215. A select committee was appointed to prepare the tax bill, another to consider the expediency of borrowing money, and to consider and report any other measures for supplying the treasury, and still another to make up the list of appropriations for the civil list and contingent expenses.

array of work laid before the standing committee, select committees were appointed to revise the excise laws, to consider the "expediency of issuing" a tax, the amount to be raised, the proportion to be levied in specie, to suggest the amount of the poll tax, to bring in the tax bill, and finally to consider ways and means for paying the civil list.[29] Not once again during the whole period was there anything like real unity in the work, as there had been in 1780 and 1781. The committee was in process of development, and it took shape slowly.

In Pennsylvania there was a like period of experimentation, but by 1790 the legislators seemed to have a very clear idea of what their committee was expected to do. Its reports included a detailed statement of the condition of the treasury, with the amounts on hand, those likely to be received, and the budget for the year, carefully figured out to shillings and pence. A second part of the report advocated both foreign and domestic loans, and urged that more paper be issued. Finally, it made general recommendations regarding the appropriation of the money raised by taxes and the domestic loan, suggesting that it be used to pay running expenses, warrants drawn by the late executive council, and warrants drawn by the governor before that session. After some changes had been made in committee of the whole, a select committee was appointed to bring in a bill for carrying the provisions into effect.[30] Thus in Pennsylvania the attempts to bring order out of financial chaos resulted in the establishment of a systematic, businesslike method of handling the problems of revenue and expenditure.

[28] *Mass. H. Journal,* June 3, 1789, p. 41.

[29] *Ibid.,* June 22, 1789, p. 125; January 19, 28, February 18, 26, 1790, pp. 175, 204, 261, 287.

[30] *Pa. H. Journal,* December 30, 1790, p. 54; January 11, February 8, 23, 26, March 1, 1791, pp. 84-85, 162, 215, 226-231.

Another good example of a well-developed committee of ways and means was to be found in South Carolina. From 1783 to 1790 the committee was regularly used, with less uncertainty and more consistency than there had been in Massachusetts. In addition to making general recommendations regarding the management of finance, it made up the budget, proposed new taxes, framed tax bills, and suggested appropriations.[31]

In North Carolina, too, from 1784 to 1790, there was an important joint committee on finance or on revenue, the duty of which was to collect and lay before the assembly information regarding public finance. It made up the budget, but revenue bills were framed by the all-important committee on public bills.[32] After its appointment, the committee on finance divided itself into several subcommittees, to each of which was assigned a definite share of the work. One division, for example, would be concerned with the condition of the revenue, and with the budget; another would look up and report how the public funds had been used during the preceding year, while another would report on the condition of the foreign debt, and so on. Sometimes there were as many as nine of these subcommittees.[33]

[31] *S. C. H. Journal,* January 25, February 18, 22, 1783, pp. 40, 174-175, 202, February 17, 25, 1784, pp. 125, 175; February 18, 1785, pp. 151-152; February 11, 1786, pp. 43-44; February 25, 1786, pp. 121-125; January 25, 1788, p. 64.

[32] In 1786, when the committee on public bills was temporarily deprived of some of its functions, the committee on finance did frame the tax bill; *N. C. State Recs.,* XVIII, 279, December 6, 1786; ordinarily the committee on public bills did the work; XX, 491; XXI, 214.

For reports of this committee on finance, see *N. C. State Recs.,* XVIII, 280-282; XXI, 141-147.

[33] *N. C. State Recs.,* XVIII, 282-283; XXI, 634.

In Virginia there was a standing committee of ways and means for two years only, 1779-1780; it suggested methods of raising money, and framed the revenue bills. *Va. H. of D. Journal,* November 9, December 10, 15, 1779, pp. 47, 83, 90-91. After 1781, financial measures were brought up and discussed in the committee of the whole house.

In New York, a standing committee of ways and means was regularly

In addition to the committees for handling petitions, accounts, and finance, there were others that foreshadowed the later custom of appointing standing committees on matters of general importance in the state. After the war the legislatures had time to devote their attention to internal affairs, such as manufactures, roads, or agriculture, and their increasing interest in the general welfare is indicated by the creation of new committees. In Massachusetts, for example, in 1788 and thereafter, there was a standing committee for the encouragement of arts, agriculture, and manufactures.[34] Similarly in Maryland, a new committee on trade and manufactures was appointed, whose duty it was to examine proposals for the establishment of manufactures, and to consider and report the best method of starting manufactures, and of promoting trade and commerce.[35] In Virginia the committee on trade had been allowed practically to die out during the war, but in 1783 it was reëstablished under the name of the committee on commerce.[36] It was ordered to take into consideration all matters relating to "trade, manufactures, and commerce," and to suggest "occasionally such improvements as in their judgment may be made"

appointed, but it did little work. In 1779 it drew up the tax bill, and also the general appropriation bill, but other important financial work was turned over to select committees. *N. Y. H. Journal,* August 25, 27, September 21, October 18, 1779, January 27, 1780, pp. 7, 10, 32, 74, 88. In 1787 the committee of ways and means drew up the annual tax bill, but in other sessions, although it was regularly appointed, select committees did the work.

In New Hampshire, Rhode Island, Connecticut, New Jersey, and Georgia there was no standing committee on ways and means or on finance.

[34] *Mass. H. Journal,* May 31, 1788, pp. 31-33; June 2, 1790, p. 46.

[35] *Md. H. Journal,* May 6, 1783, p. 2; November 15, 1785, p. 2.

[36] During the war the committee on trade had almost nothing to do, and the work formerly done by the committee on claims was turned over to it. In 1783 the name of the committee on trade was formally changed to that of the committee on public claims, and a committee on commerce was appointed. *Va. H. of D. Journal,* November 27, 1779, p. 73; May 19, 1783, p. 12.

with reference to these interests. In North Carolina for two years there was a standing committee on Indian affairs, to which was referred business relating to the western frontier, but it was dropped after the committee on public bills took charge of all public questions of that kind.[37] In South Carolina, in 1791, a standing committee on "Public Roads, Bridges, Causeways, and Ferries" was created, to which petitions dealing with such matters might be referred.[38]

Along with this increase in the number and variety of standing committees there was a corresponding enlargement of the field of their activity. During the colonial period the House of Burgesses of Virginia was the only assembly in which bills were drafted and amended by standing committees. After 1776 that practice was continued there, and it was also taken up in some of the other states, particularly in Massachusetts, New York, Pennsylvania, and the Carolinas. As the standing committees increased in number it was only natural that they should be given work which dealt with the actual processes of lawmaking.[39]

The most interesting and unique change in any assembly took place in North Carolina, where a peculiar system developed, the outgrowth partly of the regular committees in use during the colonial period, and partly of the "Junto." The authority exercised by the informal committee of party leaders was transferred to a regular standing committee, on public bills. The members of this new committee were the leaders of the legislature, and they formulated the policy to be pursued,

[37] *N. C. State Recs.*, XXI, 12, 211.

[38] *S. C. H. Journal*, January 13, 1791, p. 18.

[39] The following are not isolated cases, but examples. *Mass. H. Journal*, June 5, 1782, p. 54; June 20, 1789, p. 121. *N. Y. H. Journal*, February 6, 1781, p. 11; January 29, 1784, p. 20. *Pa. H. Journal*, February 15, 1781, p. 570; January 11, 1791, pp. 84-85. *N. C. State Recs.*, XVIII, 279; XXI, 45. *S. C. H. Journal*, February 6, 1784, pp. 72-73.

and determined what action should be taken on important matters. Like the English Cabinet, it was evidently a system of "machine" rule which finally received formal sanction.[40]

This period between 1776 and 1790 rather than before is the time when the standing committee really came into extensive use. Legislators in several of the states had become familiar with the possibilities of the institution, and as they began to appreciate its value, they enlarged their groups of committees to meet new needs. To be sure in some of the states very few changes took place. New Hampshire, Rhode Island, and Connecticut had no standing committees in 1790, and the legislatures in New Jersey, Maryland, and Georgia were not very well supplied. Surprising as it may seem, the system in Virginia in 1789 was practically the same as it had been in 1769. The standing committees had not increased in number, and there was no important variation in the kind of work done. Institutions in Virginia were the product of a long period of slow, steady development, and changes came slowly. The greatest increase in the number of committees took place in Massachusetts and in South Carolina. In 1775 Massachusetts had only two standing committees, while in 1789 she had eight, and in South Carolina between 1776 and 1791 the number increased from one to six.[41]

[40] Because of its peculiar relation to constitutional history, this committee on public bills will receive fuller treatment in the next chapter.

[41] *Mass. H. Journal*, July 24, 1775, p. 9; September 21, 1775, p. 110; May 29, June 2, 1789, pp. 21, 35-36, 39, 49. The eight were: committee on accounts, on petitions for the abatement of taxes, on petitions for the encouragement of agriculture and manufactures, on applications for the incorporation of towns, on applications for new trials, on petitions regarding the sale of real estate, on petitions for naturalization, and on finance.

S. C. H. Journal, September 18, 1776, p. 7, committee on privileges and elections; January 11, 12, 13, 18, 1791, pp. 7, 15, 18-19, 59, committees on privileges and elections, accounts, religion, public roads, bridges, etc., courts of justice, ways and means.

CHAPTER V

COMMITTEES ON LEGISLATION, AND THE COMMITTEE ON PUBLIC BILLS IN NORTH CAROLINA

Although it brought about practically no direct change in the functions or strictly formal organization of the lower house, the Revolution did affect that extra-constitutional development which had acquired so much importance during the later colonial period. The executive and legislature no longer represented two opposite political systems; on the contrary both looked to the voters as the ultimate authority, and ordinarily both the governor and the majority in the assembly were of the same political faith. As a result constant friction gave way to a more or less friendly coöperation, and these two branches of the government were free to devote themselves to their proper duties. The strife of the colonial period had given to the legislature that highly centralized type of organization of which the "Junto" was the characteristic feature. After 1776, when the representatives of the voters were no longer compelled to spend the greater part of their time in a controversy with the governor, party machinery played a somewhat less conspicuous rôle than before. The primary need of all the legislatures was a system that would facilitate the transaction of ordinary business, of which, because of the war, there was an unusually large amount. Thus the colonial "Junto" had generally dropped out of sight

along with the conditions responsible for its origin, and in its place there appeared a collection of standing committees. Because of a combination of circumstances, therefore, which found expression partly in the new state constitutions based on the theory of the separation of powers, and partly in the committee form of legislative organization, the tendency toward parliamentary government, with one important exception, practically disappeared.

In order to put the system on a surer footing, it would have been necessary to change the "Junto" from an unofficial, self-constituted body into a regular standing committee, and to confer upon it power to control all departments of the government. In North Carolina such a committee actually came into existence, not as the result of any provision in the Constitution, but rather as a product of legislative procedure. This committee on public bills, or "Grand Committee," as it was sometimes called, was composed of the leading members in both chambers of the assembly. It resembled the British Cabinet in the extent of its authority over the government in general, and in its influence in the legislature in particular; it differed from that body chiefly in that its members were not made heads of executive departments.

Although this committee did not become prominent until after 1780, it first appeared in North Carolina in 1776, and at that time it was very much like similar committees that were being used in New Hampshire, Massachusetts, Pennsylvania, South Carolina, and Georgia. For want of a better name they may be called committees on legislation. They were not standing, but select, nevertheless they had prescribed duties to perform, so they may be considered parts of the systems.

In some cases they were joint committees, in others they were composed of House members only.[1]

According to the resolutions adopted at the time of their appointment, these committees on legislation were expected to draw up and lay before the assembly an outline of the work to be done during the session. They would make out lists of bills which in their opinion ought to become laws, and also call to the attention of the legislature other matters concerning which action was desirable. The duties of the committees were practically the same in all states. In New Hampshire, for instance, the committee was ordered "to examine and see what Laws of a public nature would be beneficial to be passed." In Massachusetts, it was appointed to consider and report on the business which ought to come before the General Court, and in Pennsylvania to report to the House "what laws it will be most immediately necessary should be passed at this session." In fact, the order of any one assembly to its legislation committee might equally well have applied to all.[2]

The real nature of the committee is to be seen most clearly in the reports which it submitted, and here again the close resemblance of the committees in the various states stands out plainly. The report would recommend certain new laws, perhaps to enforce the payment of

[1] *N. H. Prov. Papers, H. Journal,* VII, 69, June 13, 1765, 1st appointment. *Ibid.,* VIII, 81-82, March 7, 1776. Joint after 1776. *Mass. H. Journal,* June 24, 1777, p. 36. *Ibid.,* June 17, 1778, p. 30. *Ibid.,* October 28, 1780, p. 25. Joint after 1780. *Pa. H. Journal,* May 22, 1777, p. 133. Appointed only once. House only. *N. C. St. Recs., H. Journal,* XII, 289, November 22, 1777. Joint. *S. C. H. Journal,* March 29, 1776. House only. *Ga. Revol. Recs., H. Journal,* III, 35-36, January 2, 1782. House only.

In New York, throughout the whole period, 1750-1790, a committee was regularly appointed to report to the House temporary laws which needed to be renewed, and also to suggest any new laws that might be needed. But the committee confined itself to reporting laws which needed renewal, and only once did it suggest a new one. *N. Y. H. Journal,* January 7, 1773, p. 7.

[2] References as in note 1.

taxes, to regulate the militia, or to reorganize the judiciary. Then, in addition, the committee would call the attention of the assembly to other necessary work, such as issuing commissions to certain judges, drawing up general orders for troops, disposing of the gunpowder owned by the state, or selling a ship which had been employed in naval service.[3] In all cases the report of the committee became the program for the more important work of the session. Because of the fact that it proposed the enactment of new laws, it was of a different nature from the well-known "steering committee," which simply arranges in order work already before the House, so that important measures will not be neglected.[4]

In the colonial period the governor regularly made suggestions with reference to new legislation, and this custom was continued after the state governments were organized. In view of the fact that the governor was no longer the representative of an outside power, it would naturally be supposed that the committee on legislation would coöperate with him in this work, or at least that his speech or message would be referred to the committee. Coöperation may or may not have taken place, but in only two states, New Hampshire and North Carolina, was the message regularly referred to the committee on legislation.[5] Elsewhere, with some excep-

[3] *N. H. Prov. Papers, H. Journal,* VIII, 133-134, June 6, 1776. *Mass. H. Journal,* May 30, 1783, p. 23. This is the first report entered in the *Journal,* although the committee had been regularly appointed since 1777. *S. C. H. Journal,* August 1, 1783, p. 11. *Ga. Revol. Recs.,* III, 157-158, July 28, 1782; 204-206, January 11, 1783.

[4] The "steering committee" is not a modern institution by any means. In 1571 a committee was appointed "for appointing such bills for the common-weal as shall be first proceeded in, and preferred before the residue . . ." *Commons Journal,* I, 86, April 16, 1571; Jameson, 249.

[5] *N. H. St. Papers,* XX, 413, October 20, 1785. In one case the message went to a separate committee, *ibid.,* XXI, 597-598. After 1781, in North Carolina, the message was always referred to the committee. *N. C. St. Recs.,* XVII, 638-639, January 29, 1781.

tions in Massachusetts, the governor's communications were placed in the hands of separate select committees, or given over to the committee of the whole house. The recommendations of the governor bore directly on the work of the committee on legislation, and it seems strange that a separate committee should have been appointed to report on his message. Evidently the different parties concerned were more interested in receiving suggestions from all possible sources than in a coördination of effort. The legislature looked to the governor for advice, but it seems to have felt that he might neglect certain important matters. To guard against omissions, the members supplemented the governor's message with a report of one of their own committees.

The practically simultaneous appearance of these committees indicates common conditions in the legislatures of widely separated states. In New Hampshire the committee was in use during the decade before the Revolution; but in the other five states where it appeared it came into existence sometime between 1775 and the end of the war. Apparently the idea came from the colonial "Junto." For several years the assemblies had entrusted the task of arranging their business and guiding their activities to a few prominent members. That practice became a habit, so that formal provision was made for the compilation of programs for the sessions. The need for expert guidance of some sort was evident after 1775. The legislatures increased enormously in size, sometimes to double or treble the former membership. Firmly convinced of the value of general representation, the people determined to have plenty of it. These large legislatures must necessarily have included numbers of inexperienced members, who would be obliged to follow the lead of their trained

colleagues. In order to prevent the new members from losing themselves in the maze of procedure, the legislatures found it desirable to appoint a committee to arrange the business, so that the more important items at least would receive attention.

For some reason the movement which brought these committees into existence lost its momentum, and with one exception they never advanced beyond the starting point. In some states they lived along, playing a small part from session to session, while in others they quietly dropped out of use. In New Hampshire its most flourishing period was from 1765 to 1784; after the reorganization of the government in that year, the importance of the committee declined, and its reports were no longer entered in the Journal. In Massachusetts there was little change, one way or the other. In Pennsylvania it was appointed only a few times, because there the president and council were directed to do such work. In South Carolina it disappeared before 1790. This development is of some interest, not because of its intrinsic importance, which was slight, but because it shows by what a narrow margin the other states escaped the adoption of a system like the one that developed in North Carolina.[6]

This tale of aimless drifting and subsequent decline does not apply to North Carolina. There, instead of lingering on as a semi-useless select committee, the

[6] The *Journal* does not prove that the legislation committee in North Carolina became standing before 1783. In other states, proof that it did not become standing is to be found in subsequent appointments of similar committees during the same session. In New Hampshire always and often in Massachusetts a second committee would be appointed near the end of the session, to gather up the loose ends and report on the business yet to be done. In South Carolina and Georgia the reports of the committee would be referred to other committees for consideration, and the first one never reported again. *N. H. St. Papers, H. Journal,* XX, 371, June 17, 1785; *Mass. H. Journal,* October 18, 1783, p. 264; *S. C. H. Journal,* August 1, 1783, p. 11; *Ga. Revol. Recs., H. Journal,* III, 158-159, July 28, 1782.

committee on legislation came to be not only the most important standing committee in the assembly, but a powerful executive body as well, so that its members really governed the state. Yet, during the first few years of its existence there it differed in no respect from similar committees in other states. But in North Carolina the committee was kept busy. Not only the governor's message, but all state papers were referred to it, so that its reports included all the important measures upon which action had to be taken. The policy of concentrating the most important work in the hands of one committee naturally forced that committee into prominence.

The committee on public bills, as the committee on legislation came to be called in North Carolina, first appeared in the Provincial Congress of 1776, a nameless, select committee, similar in all respects to the committees on legislation in the other states.[7] When the state government was organized in 1776, a similar committee, made up of members from both houses, was appointed in the new legislature.[8] In 1781 and thereafter the governor's message with its accompanying public papers was referred to it.[9] So far, however, the committee was not much, if any, more important than the corresponding committee in New Hampshire. But by 1783, as repeated references in the *Journal* show, it had taken the long step forward of becoming a standing committee. By 1784 it was acquiring a name, another step in advance. Its contemporaries never had a distinctive title, but this one was coming to be known as the committee on public despatches, or on public bills, or sometimes as the "Grand Committee." From 1784 on, with the exception of one year, this "Grand Committee,"

[7] *N. C. Col. Recs., Journal,* X, 546, April 29, 1776.
[8] *N. C. St. Recs.,* XII, 289, November 22, 1777.
[9] *Ibid.,* XVII, 637, 638, January 28, 29, 1781.

composed of fifteen or twenty of the leaders in both chambers, was the most important factor in the whole governmental system of North Carolina.

An analysis of the resolutions regarding it, of the subjects referred to it, and of the work which it did in 1784 shows the comprehensive field which it covered. According to the *Journal* entry, in addition to making out a list of new bills that were needed, the committee was ordered "to examine the message of His Excellency the Governor, together with the papers accompanying the same, and report what measures are necessary to be taken in consequences of the intelligence they convey."[10]

The documents referred to the committee covered subjects of the most varied character and of the greatest importance. The governor's message itself dealt with numerous matters which concerned both local and foreign interests of the state. In the first place, it requested the assembly to take action on the proposal to allow Congress to collect an import duty in North Carolina; in addition, the governor urged that attention be devoted to such matters as trade, navigation of the rivers, and education; he also submitted for amendment a recent law regarding the land office.[11] The papers which accompanied the message included a copy of the treaty of peace with England, and certain recommendations of Congress relating to it, a copy of the treaty between the United States and Sweden, and the British proclamation by which American trade with the West Indies was restricted. Not long after, an important petition regarding the claim of an Englishman to certain land in North Carolina was referred to it.[12] The next day, another message of the governor, accompanied by more papers from Congress, was given to the committee.

[10] *N. C. St. Recs.*, XIX, 542, *H. Journal*, May 3, 1784.
[11] *Ibid.*, XIX, 494-499, 501, April 20, 1784.
[12] *Ibid.*, XIX, 502, April 21, 1784.

These papers had reference to land claimed by foreigners, and to the restoration of property to a loyalist. On the same day, the House ordered the committee to consider and report for what purposes the fines and forfeitures in the Superior Court should be appropriated.[13] The committee therefore was expected to deal with questions concerning the whole range of governmental activity: local affairs, such as finance, commerce, navigation, and education; relations with the United States on matters of revenue, commerce, and treaties with foreign powers; and, finally, direct relations with subjects of a foreign nation concerning land claimed in the state. In its meetings the members must have discussed every vital matter of public interest, and it is clear that a report of the committee was a necessary preliminary step to any important legislative act.

The long detailed reports comprised the committee's recommendations upon the various topics referred to it, and really constituted a definite and explicit statement of the domestic and foreign policy of the administration. The report of 1784, which may be taken as typical, dealt with important questions relating to both local and interstate affairs. As regards the policy of North Carolina toward the United States, it recommended among other things that North Carolina agree to the suggestion that Congress be allowed to collect import duties in the ports of the state, that Congress be allowed to regulate foreign trade, that provisions be made for straightening out the tangled condition of finance, that the western lands be ceded to the United States, and that the state repeal those laws which would prevent carrying into effect the terms of the treaty with England. Concerning state and local matters, it recommended: the passing of laws for a tariff on negroes and merchandise imported into North

[13] *N. C. St. Recs.*, XIX, 505, 506, April 22, 1784.

Carolina, and for a tax on such luxuries as billiard tables, playing cards, and dice; the passing of new laws regarding highways and navigable rivers, taverns, elections, and public buildings; a recommendation was also made regarding relations with another state, in connection with the southern boundary.[14]

These reports of the committee furnished the assembly with its legislative program for the session, and the measures suggested by it were generally adopted. That would naturally be the case, because the committee's report was nothing but the clear and definite statement of the purposes and policies of the assembly leaders. They determined what action ought to be taken, and then saw to it that these measures were approved by the assembly. In 1784, out of proposals for eighteen specific bills, fourteen were introduced during that session.[15]

The subjects referred to the committee, together with its reports, show how intimately connected its members were with every question of public importance. But it was not alone in the fields of general policy and of legislations that the committee on public bills was practically supreme. It had in addition general oversight of the whole administrative system throughout the state. The new constitution had vested considerable executive authority in the legislature, and thus indirectly

[14] *N. C. St. Recs.*, XIX, 542-547, May 13, 1784.

[15] It is clear that in 1787 at least the management of the assembly was vested in a kind of inner committee, of about twelve men. In that year, the finance committee (see chapter IV), which was appointed as usual, was soon fused with the committee on public bills. The reason given for this consolidation was that "the whole of the Gentlemen who act on one are members of the others." *N. C. St. Recs.*, XX, 192-193, December 5, 1787. But a comparison of the two committees shows that only about half of those on the finance committee were members of the other, *ibid.*, pp. 123, 124, 125, 126, 136, 152, 188; the finance committee was composed of 19 House, and 9 Senate members, while the public bills committee was composed of 14 House and 9 Senate. Only 8 House members and 5 Senators were on both committees. The statement quoted above indicates that the actual control of affairs was in the hands of these few men.

it conferred more power on this joint committee. In the first place the governor was elected by the assembly, so he must have been on friendly terms with the influential members in that body. Moreover the legislature appointed judges, military officers, and also the Attorney-General, Treasurer, and Secretary of State.[16] This appointing power naturally made all the important officials responsible to the assembly, or in other words, to the committee on public bills.

Thus in North Carolina a joint standing committee, composed of the most prominent members of the party in power, formulated the policy of the government with reference to local and foreign affairs, supervised finance, decided upon the legislative program, and, in addition, through the appointing power, directed the administration. It would be difficult to point out any power possessed by the British Cabinet that was not exercised by the committee on public bills. The essence of parliamentary government is the management of both legislature and administration by a joint standing committee, composed of the political leaders of the party in power, responsible to the legislature which it guides and directs. These conditions were fulfilled in North Carolina. The chief difference between the systems in England and in North Carolina was the fact that in the British Cabinet legislative control over the administration is direct, because the members of the Cabinet are the heads of the executive departments, while in North Carolina the control of the committee on public bills was

[16] Thorpe, *Am. Charters and Consts.*, V, 2787-2794, especially articles 13, 14, 15, 22, 24.

For other reports, see *N. C. St. Recs.*, XX, 491-492, November 10, 1788; XXI, 214-215, November 9, 1789; XXI, 889, November 5, 1790.

For lists of public papers referring to it, see *ibid.*, XX, 128-130, November 21, 1787; XXI, 16-17, November 7, 1788; XXI, 69, November 19, 1788; XXI, 876-879, November 2, 1790; XXI, 911, November 12, 1790.

indirect, based on the appointing power. The net result, however, was the same in both cases.

The interesting fact about this system in North Carolina is it was not an importation from abroad, but a purely native growth. Indeed it is doubtful if the North Carolinians knew what the British form of government really was, so they could not have copied if they would. The origin of the committee on public bills is to be found, not in foreign, but in local, legislative procedure. Before 1776 the government to all intents and purposes had been carried on by the leaders of the popular party, but their power was based on personal influence alone. There was no regular institution like the Cabinet to give permanence to the system. This defect was remedied after 1776. In the first place the governor was made constitutionally subject to the assembly, and the extra-legal "Junto" was transformed into a formal standing committee.

If there is anything surprising in this duplication of what has always been considered a peculiarly British institution, it is that more of the states did not stumble on the same thing. Massachusetts and New York with their systems of government by "Junto" both came dangerously near it before the Revolution, and no less than six legislatures had committees like the progenitor of the "Grand Committee" in North Carolina.

The appearance of this type of government, however, has left no trace on the growth of American institutions. For that very reason it is difficult to refrain from speculating on what might have happened if the system had grown up in Virginia, the state which had so much influence in casting the government of the United States in its present mould. If James Madison, the political scientist of the Federal Convention, had been as familiar with this development as he was with the dead systems

of ancient Greece and Rome, he might have urged a similar scheme upon the constitution makers of 1787. As it was he had devoted himself so completely to a study of the faults and defects in foreign governments that he had made no attempt to analyze certain very interesting political phenomena just across the border of his own state.

CHAPTER VI

THE COMMITTEE OF THE WHOLE HOUSE

While somewhat of a misnomer, the term "committee of the whole house" has been accepted in legislative parlance as the approved designation for an informal sitting of a lawmaking body. It is really not a committee at all, but a meeting of the house itself, conducted under rules different from those of the formal sessions. Restrictions on the number of speeches a member may make are removed, so that debate is free, and the presiding officer may be any member selected for the occasion, except the Speaker. The purpose of such a session is to enable the members to thresh out a question more completely than could be done under the limitations imposed by the regular rules.

The custom originated in the English Parliament, apparently during the reign of James I. Its adoption was probably brought about by the necessity for combining freedom of debate with certain restraints on obstreperous members who might misuse too much liberty. The committee of the whole is really a compromise between a regular session, and an adjournment for purposes of discussion. The latter method could not be used to advantage in any large assembly, because some restraining influence would be necessary. But the primitive form of the committee of the whole was probably a short adjournment, during which members could move about from one to another, and freely discuss the merits of the matter under consideration. In 1750 the House of Representatives of New Hampshire did

not have a very complex organization, and sessions of the committee of the whole were unknown. But there are several instances where the House adjourned for a short time, from six minutes to a few hours, to allow time for discussion before a vote was taken. With a large membership, the only result of such a method would have been pandemonium, and the adjournment and consequent freedom from rules would have defeated its own object. But in New Hampshire the practice was common enough so that a motion for such an adjournment, far from causing surprise, was taken as a matter of course.[1]

The idea of an informal session which should at the same time be under some restrictions was brought to America from England, and the committee of the whole house, like the committee on grievances, was to a greater or less extent common to most of the middle and southern colonies. In New York and Georgia all bills, with rare exceptions, were referred to the committee of the whole after the second reading. While by no means so strictly followed elsewhere, this practice was well known in Virginia, and also in the Carolinas before the war. In New England, on the other hand, the committee of the whole, properly so-called, was rarely used, and then not for purposes of discussing bills.[2]

[1] *N. H. Col. Recs.*, VI, 453, January 2, 1756; a motion was made for a short adjournment, so "that the members might converse more freely on the subject matter of his Excellency's message of this day"; the House then adjourned for fifteen minutes.

Other examples: VI, 155, November 7, 1752; pp. 202-203, May 4, 1753; p. 269, April 12, 1754.

Sometimes there would be a short adjournment, in order to allow the passage of a bill in one day, and at the same time comply with the rule which required at least two adjournments between the three readings of a bill.

[2] In the session of the New York Assembly, September-October, 1750, all but four bills were referred to the committee of the whole after the second reading. The exceptions were local bills, and were committed to

In respect to bills, procedure did not change very much throughout the period. In Pennsylvania, however, where it had been almost unknown before the war, the practice of referring bills to the committee of the whole was made a regular custom. A rule was adopted to the effect that all bills of a public nature should be placed upon the calendar for a certain day, and unless the House explicitly voted otherwise, they should be debated in committee of the whole previous to the third reading.[3]

But decrease in this use of the committee of the whole was more common than its extension. In both the Carolinas, where bills had frequently been discussed in committee before the war, the practice had almost disappeared by 1790. Why it should have been discontinued in South Carolina is not clear, for very few changes in procedure occurred there. But in North Carolina, at least for this period, there was no necessity for such a custom. The assembly was guided and controlled by the leaders, through the committee on public bills. They proposed important measures, and new bills were framed either under their supervision or by their own subcommittees. This type of organization meant, of course, a thorough centralization of authority in the hands of a few individuals. Important bills, which in New York or Pennsylvania would have been referred to committee of the whole, came into the assembly of North Carolina stamped with the mark of approval by the committee on public bills. Under such circumstances reference to committee would have been not only unnecessary, but somewhat out of harmony with the spirit

members from the section interested. *N. Y. H. Journal,* September 24, 1750, p. 283; October 3, p. 286; October 16, p. 291.

In Virginia, such reference was fairly common. In the session which lasted from October, 1785, to January, 1786, over twenty bills were thus committed.

[3] *Pa. H. Journal,* January 21, 1791, p. 106.

of central control. Then, too, since all bills were framed by joint committees, differences of opinion between the two chambers could be satisfactorily settled even before the first reading.

Besides discussing bills, the house in committee of the whole also debated various financial measures. Before 1776 in some cases the governor's recommendations would be considered in informal session, and new taxes might or might not be recommended.[4] Then, especially after the war, questions of taxes and revenue were often discussed in committee of the whole, even without any urging from the executive. In Virginia, where the committee on ways and means did not become firmly established, financial measures were regularly debated in this way. In 1777, for instance, a very extensive list of new taxes was drawn up in committee of the whole, and then laid before the House. The recommendations included taxes on real estate, slaves, horses and cattle, dogs, plate above a certain value, mortgages, annuities, salaries, tavern and marriage licenses, and carriages; also a poll tax, and an excise on distilled liquors.[5]

[4] *N. Y. H. Journal,* April 25, 1755, p. 440. The governor had urged the adoption of measures for defending the colony; after discussion in committee of the whole, the House voted to raise £25,000, partly by a tax, and partly by the issue of bills of credit.

Procedure in Virginia and North Carolina was similar. See especially the short sessions of 1754 and 1755, *passim, Va. H. of B. Journal. N. C. Col. Recs.,* V, 250, December 23, 1754; 847, May 18, 1757.

[5] *Va. H. of D. Journal,* December 13, 1777, pp. 77-78. On November 29, 1781, p. 21, December 5, p. 28, and December 6, pp. 29-30, recommendations were made regarding paper money, its redemption, and attempts to fix its value. November 5, 1787, p. 31, the committee of the whole recommended tariff duties on bar iron and castings, coal, rope, cordage, and raw hemp. If a select committee was appointed to report new taxes, its report would be subject to amendment and revision in committee of the whole. *Va. H. of D. Journal,* December 7, 1781, p. 31; December 10, p. 34; December 17, p. 44.

The same practice was common in New Hampshire after 1776, and in Pennsylvania. *N. H. St. Papers,* VIII, 778-779, March 4, 1778; XX, 419,

In states where a committee on ways and means was in existence, its reports and recommendations regarding new taxes and similar matters were subject to amendment in committee of the whole. When money was scarce, demands for new taxes could not be passed with impunity, and every measure of that kind was debated at length in informal session.[6]

In New York, too, the annual appropriation bill was drawn up in committee of the whole. Salaries of the governor, judges, members of the Council and Assembly, and, in fact, of all state officials, were settled in this way. In addition, all accounts and claims of individuals, and all state expenditures, no matter how minute, were voted upon in committee of the whole. After they were all satisfactorily determined, a select committee would be appointed to frame the appropriation bill in accordance with these recommendations.[7]

Sessions of the committee of the whole house were not

October 25, 1785; 689, September 8, 1786; XXII, 179-180, January 27, 1791.

Pa. H. Journal, March 13, 1759, p. 28; March 15, p. 30; January 24, 1772, pp. 357-358; February 28, 1777, p. 116.

[6] *N. Y. H. Journal,* August 25, 1779, p. 7; October 18, p. 74; January 27, 1780, p. 88, January 28, 1780, p. 91; February 7, 1786, p. 32. Tax bills were all discussed in committee of the whole.

Pa. H. Journal, March 8, 1781, p. 584, Report of ways and means committee referred to committee of the whole; also March 22, p. 593, and March 23, p. 595. When Virginia had a committee on ways and means, the same procedure was followed; *Va. H. Journal,* December 2, 1779, p. 76; December 10, 1779, p. 83.

S. C. H. Journal, February 12, 1784, p. 104; February 17, p. 125; February 16, 1785, p. 140.

Md. H. Journal, November 25, 1785, p. 22, one of the very rare cases when the committee of the whole was even mentioned. A motion to go into committee of the whole to consider the establishment of permanent funds for payment of judges' salaries was not carried.

[7] *N. Y. H. Journal,* 1750; almost daily sessions of committee of the whole from September to November 7, pp. 277 to 298, when a partial report was presented. Further report presented November 9, pp. 299-303. November 13, p. 303, the appropriation bill was read the second time, and referred to committee of the whole.

devoted wholly to bills and questions of finance; any matter of importance might be discussed in informal session. In Massachusetts, for instance, when one of the Harvard buildings where the General Court had been meeting was burned, the House in committee of the whole took up the question of rebuilding it at public expense.[8] In Pennsylvania, the Indian question was discussed in committee of the whole, and a recommendation was made at one time that settlements on Indian lands be prevented by law, unless the land had been purchased.[9] Sometimes charges of maladministration or corruption in public offices were investigated by the committee of the whole.[10] An amusing case occurred in Georgia, when a petition was presented to the House complaining of inhuman treatment of prisoners in the jail. The House "immediately resolved itself into a Committee of the Whole House upon the said Petition," and went in a body to the jail to look into the matter.[11] The notion of a legislative body in committee of the whole on a tour of investigation savors somewhat of the humorous. Then, during the decade before the war, relations with the other colonies and with England sometimes came up for discussion in committee of the whole, especially in Massachusetts and Virginia.[12]

Perhaps the most unusual function of the committee of the whole house was to be found in Virginia, where

[8] *Mass. H. Journal,* January 26, 1764, p. 229; the General Court had been meeting in Cambridge, because of an epidemic of smallpox in Boston.

[9] *Pa. H. Journal,* January 7, 1768, p. 10.

[10] *Pa. H. Journal,* December 6, 1780, p. 546; *N. C. St. Recs.,* XVIII, 425.

[11] *Ga. Col. Recs.,* XIV, 214-215, February 12, 1765. The House numbered about fifteen, so it was not much larger than some select committees for investigation in other colonies.

[12] *Mass. H. Journal,* October 19, 1764, p. 97; June 2, 1766, p. 20; June 2, 1773, pp. 26-27; June 8, 1774, p. 19.

Va. H. of B. Journal, November 13, 1764, p. 254; April 6, 1768; April 7, p. 158.

its recommendations were similar to the reports of the committees on legislation, or of the committee on public bills. Instead of allowing a select or standing committee to make out the program for the session, the House in informal session drew up its own.

In Virginia especially the fiction of the committee of the whole house was carried a step further than elsewhere. In that state it had two forms, or perhaps rather a kind of dual personality. There was first the simple "Committee of the Whole House," to which were referred bills after the second reading. Then there was the "Committee of the Whole House on the State of the Commonwealth," which discussed the governor's letter and outlined the legislative business. There was, to be sure, no actual difference in form, but there was a clear distinction between the two in the minds of the members, and in the nature of the work done. If by mistake business was referred to the simple committee of the whole, when it should have gone to the other, the error would be rectified, and an entry would be made in the journal to the effect that the transfer had been made.[13]

Just as in North Carolina the governor's message and the public papers accompanying it were referred to the committee on public bills, so in Virginia such matters went to the committee of the whole house on the state of the commonwealth.[14] After due deliberation, the "Committee" would lay its recommendations before the House. These reports, which, taken together, really constituted the legislative program, included such important subjects as new taxes, relations with Congress, public lands, the judiciary, militia, and commerce. The

[13] *Va. H. of D. Journal*, October 11, 1776, p. 8; the "Committee of the Whole House" was discharged from proceeding on the letters from Congress, and they were referred to the "Committee of the Whole House on the State of the Commonwealth." Similar case November 25, 1785, p. 57.

[14] *Ibid.*, October 8, 1776, pp. 3, 5-6.

reports for 1778 suggested new laws regarding pilotage rates, the recovery of debts, and military matters, such as cavalry service, bounties for enlistments, and the employment of free negroes. In addition it urged that the governor's steps to procure a loan in France be approved, and that a clerkship of foreign correspondence be established.[15] Some general reports submitted in 1784 give a fairly good idea of the scope of this work. Bills were recommended for regulating the election, payment, and attendance of delegates to Congress, revising the recently made judiciary acts, altering Article eight of the Articles of Confederation, appointing a certain sum for use of Congress, revising the militia acts, laying a temporary embargo on the export of Indian corn, regulating foreign vessels trading with Virginia, enabling officers to distrain property in order to collect the army tax, and finally for selling certain public lands.[16]

Another interesting phase of this work of the Virginian committee of the whole house on the state of the commonwealth was its dabbling in executive business. Sometimes it recommended laws, the passing of which was really equivalent to the issue of an executive order. For instance, at one time it suggested the passing of a law to repeal an act by which troops had been located at certain places on the frontier.[17] Going still further in this direction, actual executive orders were sometimes proposed in informal session, and of course confirmed by the House. The governor and council, for example, might be directed to take measures for disposing of

[15] *Va. H. of D. Journal*, May 15, 1778, pp. 8-9; May 16, p. 10; May 18, p. 11. November 30, 1779, pp. 74-75, reports recommended laws regarding the navy of Virginia, foreign consuls, and regulations of sailors belonging to foreign vessels.

[16] *Ibid.*, May 15, 1784, p. 8; May 19, pp. 11-12; May 20, p. 13; May 21, p. 15; May 28, pp. 25-26; June 10, p. 47.

[17] *Ibid.*, October 11, 1776, p. 8.

certain military supplies. Again, they were authorized to give orders for defending the southwestern frontier during some trouble with the Cherokees. Once at least the organization of certain militia companies was arranged, and the officers were named by the House. Finally orders were given, to be carried out by the commissioners of the navy, or by the governor and council, regarding the movement and work of vessels in the navy of Virginia.[18] These were matters which, strictly speaking, belonged to the executive department, but for several years after the war the line of demarcation between the functions of executive and legislature were not very clearly drawn.

In New Hampshire work of a similar character was done by a joint committee of the whole. The legislative program, strictly so-called, was drawn up by the committee on legislation, but other measures upon which action was needed were laid before the assembly in reports of this joint informal session. For instance, state officials would be appointed, and the advisability of creating commissioners for certain purposes would be suggested, such as buying clothing for troops, or receiving the money lent to the Continental Loan Office. Moreover, if the report of the committee on legislation omitted important measures, this joint committee of the whole would propose new laws.[19]

[18] *Va. H. of D. Journal*, 1776, October 19, p. 19; October 25, p. 27; October 28, p. 31; October 30, p. 33.

[19] *N. H. St. Papers*, VIII, 745-746, December 24, 1777. In a series of joint sessions in 1785, the following recommendations were submitted to the House: that the Navigation Act should not be suspended; that the President be authorized to write to the other states concerning regulation of commerce; and that committees be appointed to "close" the public accounts of the state, to consider a revision of the proscription laws, and to consider a plan for establishing a "post rider."

N. H. St. Papers, XX, 419, October 24, 1785; October 25, p. 419; October 26, p. 420; November 4, p. 438. For similar action, see February, 1786, pp. 490, 495, 497.

In New York, procedure in this respect resembled that in Virginia. The committee of the whole house, after discussing the governor's speech or message, would make suggestions regarding the action to be taken upon his recommendations.[20]

This brief survey of the committee of the whole emphasizes certain differences in the systems of government in North Carolina and in Virginia. There is nothing particularly strange or out of the ordinary in the practice of debating bills and financial measures in committee of the whole, but the custom of making out the legislative program in committee, as was done in Virginia, was unusual. At first sight it might appear to be a very democratic method; the representatives of the people in an informal way talked over the needs of the state, and then proceeded to legislate accordingly. But the gathering of a hundred and fifty members for the purpose of deciding upon such needs could accomplish little, because the very numbers would cause confusion. Some guidance would be necessary, and either a few clever politicians must have agreed to direct the members in such deliberations, thereby turning the whole thing into a machine-controlled assemblage, or the governor's "letter" would be made the basis of the recommendations. Either horn of the dilemma may

[20] *N. Y. H. Journal,* August 25, 1779, p. 7. Committee of the whole recommended bills: (1) to confiscate royalists' estates; (2) to supply the troops with clothing; (3) to raise money for state debts.

September 7, 1780, pp. 6-7. Committee of the whole recommended: (1) election of delegates to Congress; (2) appointment of a select committee to report on methods for defending the frontier; (3) appointment of a committee to procure supplies for the army; (4) appointment of a committee to complete the enrollment of the continental regiments. Further recommendations on September 13, pp. 19-20.

In North Carolina, in 1786, the legislative program was made up in joint committee of the whole; after that, however, the committee on public bills did the work, as usual. *N. C. St. Recs.,* XVIII, 255, November 27, 1786; November 28, pp. 260, 261.

have been taken. In either case, procedure differed radically from that in North Carolina, where the legislative policy was framed by the standing committee on public bills, a compact, efficient little group of assembly leaders, sufficiently small to devise a consistent policy, and influential enough to put it through. The recommendations of the committee of the whole house on the state of the commonwealth resembled those of the committee on public bills in character, but they were not so numerous. Then, too, they were never laid before the House in one solid block early in the session, to serve as a constant guide to the assembly in its work, but were brought forward in groups of three or four. The indications of smooth organization so conspicuous in North Carolina were wanting in Virginia. If the House of Delegates was controlled by a machine, the leaders were not such able parliamentarians as were the members of the public bills committee in North Carolina. Evidence on this point is wanting, but from the very nature of the case it seems likely that the governor had more or less influence in managing the legislature. The probability is slight that the committee of the whole house, unguided and undirected, could arrive at any decision regarding legislative policy on important measures. Moreover, had such sessions been wholly controlled by the assembly leaders, it is probable that the custom would have ultimately found expression in the appointment of a committee on legislation. On the other hand, a good politician like Patrick Henry could probably guide the House through personal influence alone, so that the recommendations of the informal session would reflect his will. In North Carolina, the governor could have had no great influence in shaping legislation, because he was only one of the political leaders, elected by the same men who appointed the committee on public bills. The system

in Virginia enabled an executive with a strong personality to control legislation, while that in North Carolina absolutely precluded such a possibility. It is clear, then, that there was a marked difference in the types of government in the two states. That in North Carolina revealed some of the characteristics of the parliamentary system, while that in Virginia foreshadowed the Congressional form, which the Federal Convention, largely influenced by the statesmen of Virginia, drew up for the United States.

CHAPTER VII

COMMITTEE PROCEDURE

Because of the limitations imposed by the nature of the material, an account of committee procedure in the colonial period must deal for the most part with such strictly formal details as the method of appointment, time and place of meeting, and the external features of committee organization. Information about these matters can be gleaned from the journals, but that source never gives even a glimpse of committees at work. There are apparently no records available which outline the debates and discussions, and describe proceedings in the committee rooms. The records are bare enough when the subject is taken up from the viewpoint of institutional development, but they are extremely disappointing when one looks for the human element in the institution. Legislators of the eighteenth century were by no means lacking in an understanding of devious political methods, and it is probable that in their committee meetings they worked out schemes which would make interesting reading to-day. Then, if in moments of excitement members sometimes forgot their sense of propriety, as they occasionally did even in formal session,[1] they very likely displayed considerable heat in the committee rooms. The colonial governors deserve

[1] *Mass. H. Journal*, February 18, 1782, p. 581. "Mr. Otis arose and claimed the protection of the House, as the member from Oakham had broke the Orders of the House by calling him a Scoundrell when in Order on his seat. For which indecency the Member from Oakham is ordered to ask pardon of the House, and to ask pardon of Mr. Otis. Which he did accordingly."

thanks for telling what tales they did about the practices of certain leaders in the assemblies, but even they had little opportunity to find out what went on at the private conferences of these shining lights in the lower house. It takes the sharp rivalry of active politics to bring out the truth regarding methods employed; when a man is thoroughly exasperated at the work of his opponents, he will tell all he knows about their operations. Consequently there are more stories of clever manipulation before 1776 than after, because between the outbreak of war and the adoption of the Federal Constitution there was no party in opposition. There were no competitors to report to the public facts about legislative schemes, and active participants in shady transactions would not be likely to leave evidence that might be used against them. Consequently, any attempt to discuss committee procedure must be analytical and dry rather than descriptive and interesting.

In forming an estimate of the importance of committees in legislative work, the method of appointment is a factor worthy of consideration. Up to a short time ago all committees in the national House were appointed by the Speaker, that is, by the political chief of the party in power. The membership was arranged with an eye to party interests, and control over such appointments was looked upon as a legitimate means of building up a firm party organization in the House. Even now, when the Speaker's power in this respect is somewhat less autocratic than it was, the majority party still has full control of committee membership, and the method of appointment makes the standing committee system a powerful engine for party purposes.

In the British Parliament of the sixteenth and seventeenth centuries, the manner of appointment was so different that partisan control of committees would have

been difficult if not impossible. Instead of being chosen by the Speaker, they were named in a haphazard way by the members of the House. After it had been voted to refer a bill to a committee, the Speaker, in the quaint words of D'Ewes, "did put the House in mind, to name committees. And thereupon every one of the House that listed, did name such other Members of the same, to be of the Committee, as they thought fit; and the clerk either did, or ought to have written down as many of them, as he conveniently could; and when a convenient number of the Committees named, were set down by the Clerk, then did the Speaker move the House to name the time and place, when and where they should meet."[2] Such a crude method indicates that party leaders could have cared little about the personnel of the committees. The main thing was to get some one to do the work, and apparently in those days one member answered the purpose as well as another.

In the assemblies of New Hampshire, Massachusetts, New Jersey, and probably North Carolina, much the same method was used, although there was an attempt at orderliness which was wanting in the House of Commons. According to the rules, "No member shall nominate more than one person for one committee, provided the person by him first nominated be chosen."[3]

[2] D'Ewes, 44, February 3, 1559; Jameson, 252. This same method was in use in 1603; a member would move that a committee be appointed, "and to that Purpose were called, and set down by name . . . ," etc. *Commons Journal,* I, 151, March 23, 1603.

[3] *N. H. St. Papers,* VIII, 740, December 20, 1777, Rule 15. Repeated June 8, 1784, *N. H. St. Papers,* XX, 72. Similar rules, *Mass. Prov. Cong. Journal,* p. 164, April 29, 1775; *Mass. H. Journal,* May 30, 1777, p. 8; N. J. *H. Journal,* October 24, 1792, p. 8.

In Massachusetts they were occasionally appointed by ballot. *H. Journal,* November 22, 1780, p. 126; May 29, 1789, p. 21.

In North Carolina there is no direct statement regarding the method of appointment during this period, but apparently committees were nominated by the House. The following statement hints at such a method: Resolved, that "before the House proceed to the choice of a Committee

The modern method of appointment by the Speaker prevailed in several colonies. In Pennsylvania and Maryland, both methods were used, although the choice of committees by the House took place only in cases of special importance.[4]

In Virginia and Georgia committees were regularly appointed by the Speaker. Evidence on this point is clear enough in the case of the latter assembly. According to rule, it was ordered: "That the Speaker appoint the Committees with the approbation of the House, and if any Dispute arise the Committees shall be ballotted for by the House the Member that made the Motion or proposed and the Member that seconded it being always two of that Committee."[5] Apparently the Speaker looked upon the duty of appointing committees as his special privilege, and objected to any interference with that right. During the quarrel between Speaker and House in 1756 the Speaker complained that "They appointed Several Committees I refused to chuse the Members they chuse them themselves."[6]

they determine of what number the Committee shall consist." *N. C. St. Recs.*, XVII, 269, November 20, 1785.

[4] *Pa. H. Journal*, October 16, 1767, pp. 3-4, Rule 13. "That the Speaker have Power to Nominate Persons for Committees, and that none who are nominated refuse the Service; not that any of the Members shall be hereby debarred of their Privilege of nominating Persons, if they think fit, or rejecting such as are nominated by the Speaker; in which Case the Opinion of the House shall govern."

It seems likely that appointment by the Speaker was comparatively new, entries in the Journal for October 17, 1764, p. 374, and October 16, 1765, p. 433, state that: "The House proceeded to the Nomination of their Committees for the ensuing year. . . ."

After the war, appointment by the Speaker pretty generally superseded the other method. Two instances were found when the Speaker asked the House to name the committees, because of the importance of the measures involved, but he was directed to appoint them. *Pa. H. Journal*, September 20, 1787, p. 72; September 12, 1788, p. 68.

For Maryland, *Md. H. Journal*, November 13, 14, 1782, pp. 5-6; November 15, 1784, p. 3, Rule 32.

[5] *Ga. Col. Recs.*, XIII, 424, October 14, 1760, Rule 17.

[6] *Ibid.*, XIII, 101, February 16, 1756.

In the case of Virginia evidence is not so clear, but what little there is practically proves that committees were appointed by the Speaker.[7] In the first place, Edmund Randolph, in discussing the famous Speaker Robinson, wrote that "to committees he nominated the members best qualified."[8] Again, in 1789, an order passed the House to the effect that every session, the Speaker should appoint a committee to inspect the clerk's office. When the committee was appointed the following session, the record in the Journal is worded in exactly the same way as are the entries regarding all committee appointments: "*Ordered,* that a committee be appointed," and, "a committee was appointed of . . ." so and so.[9] Thus, although the record itself gives no hint that the Speaker named the committee, the preceding order makes it probable that he did so. Moreover, when there was a departure from the regular method, the entry in the minutes calls special attention to that fact.[10]

Although the method of appointment by the Speaker lends itself more readily to the partisan control of committees, sometimes, even when chosen by the House, they were used by the leaders for party interests. Evidence already presented shows how well they were made to serve the purposes of the radicals in both Massachusetts and North Carolina before the war.[11] After 1776 in North Carolina, even during the period when there was really no organized party in opposition, the

[7] Miller, *Legisl. of the Prov. of Va.*, 109, states that committees were appointed by the House. The little evidence available points the other way.

[8] *Va. H. of B. Journal,* 1766-1769, introduction, p. xiii, quoting Randolph's MSS., "Hist. of Va.," pp. 110-111.

[9] *Va. H. of D. Journal,* November 5, 1789, p. 41; October 19, 1790, pp. 4-5.

[10] The committee on ways and means, 1779 and 1780, was elected by ballot. *Va. H. of D. Journal,* November 9, 10, 1779, pp. 47, 52; May 18, 19, 1780, pp. 12, 14.

[11] Chapters II and III.

centralized organization of the House, typified in the committee on public bills, was made more complete by appointing members of that committee to others, both standing and select. In 1784, Person, one of the active leaders, was on ten important committees, and two of his colleagues, Hawkins and Hooper, were on nine. The standing committees on public bills and on privileges and elections, and select committees to arrange for the settlement of accounts, to examine the accounts of the commissioners of confiscated estates, to make up the budget, to report what taxes should be levied, and to decide upon the method of raising them, were all controlled by about a dozen men.[12]

After the committee was appointed, some sort of organization was necessary. No matter how small it was, every committee had to have a chairman. In Pennsylvania, Maryland, and North Carolina, the presiding officer was chosen by the committee itself, while in Virginia he was apparently named by the Speaker.[13] In the case of those standing committees of Virginia and North Carolina which were kept busy throughout the session, clerks were also appointed. These were not members of the House, but regular officials, selected by the committee itself in North Carolina, and elected by

[12] In the first session of the Federal House of Representatives, the rule regarding committee appointment stated that the Speaker should appoint committees, unless the House decided that they should consist of more than three members, in which case they were to be chosen by ballot. *U. S. H. Journal,* April 7, 1789, p. 9. Later this was changed, and the Speaker was given authority to appoint all committees, unless the House specially directed otherwise; in the latter case they were to be chosen by ballot, *ibid.,* January 13, 1790, p. 140. This arrangement resembled the method in Pennsylvania, and was probably introduced through the influence of Speaker Muhlenberg.

[13] *Pa. H. Journal,* December 31, 1790, pp. 56-58, rule 16. *Md. H. Journal,* November 29, 1765, p. 43. *N. C. Col. Recs.,* V, 793, 965; X, 594. In other states evidence is wanting.

ballot in Virginia.[14] In Maryland, a few committee clerks were appointed at the beginning of each session, and then assigned to any committee in need of their services.[15]

In the colonial period this simple form of organization was sufficient, but in North Carolina and Virginia after 1776 greater burdens necessitated more attention to details. In order to insure increased efficiency in dealing with the business referred to it, the committee on finance in North Carolina divided itself into subcommittees, to each of which was given a definite division of the work. One would make up the budget, another would look into the expenditures of the previous year, and still another would be given charge of the tobacco speculation in which the state engaged. In 1789 the chairmen of these subdivisions reported directly to the House, instead of to the main committee.[16] In 1790 the committee on public bills divided into subcommittees, for the purpose of drawing up the bills recommended in its report.[17]

Apparently some such method was adopted in Virginia after 1785, although the *Journal* does not expressly record the fact. This was made necessary, not only by the amount of work, but also by the size of the committees. With a membership of about a hundred, the

[14] *N. C. Col. Recs.*, IV, 823, June 19, 1746; VIII, 141, October 30, 1769. In Virginia, before the Revolution, each of the six regular standing committees had its own clerk. After the war, the committees were grouped in pairs, one with a large amount of work, and one with little, and a clerk was appointed for each pair. *Va. H. of B. Journal,* February 28, 1752, pp. 7-8; March 6, 1773, pp. 10-11. *H. of D. Journal,* December 18, 1776, p. 103; November 16, 1779, p. 58.

[15] *Md. H. Journal,* November 7, 1765, p. 19; May 6, 1783, p. 2; November 11, 1783, p. 2.

[16] *N. C. St. Recs.*, XVIII, 282-283, December 6, 1786; six subcommittees. XXI, 634, November 30, 1789, nine subcommittees. These were all joint, because the main committee was joint.

[17] *Ibid.*, XXI, 889, November 5, 1790.

committee on propositions and grievances was clearly obliged to distribute the business referred to it in such a way that the chairman and a few faithful ones would not do all the work. The fact that in 1788 reports from this committee were presented by seven different men shows that the North Carolina scheme of subcommittees had been adopted in Virginia.[18] This method was peculiar to North Carolina and Virginia; elsewhere the standing committees were not large enough for such subdivisions.

In this period, when so much of the work consigned to committees had to do with investigating the truth of facts alleged in petitions, authority to force the attendance of witnesses was practically a necessity. Such power was regularly given to the standing committees of New York, Maryland after 1783, and Virginia, and in other states it was granted whenever circumstances made it desirable.[19]

Once given, this authority was supported by the full power of the House, and refusal to obey the summons of a committee was a serious offense. Occasionally, apparently in ignorance of the law, a man ordered to appear at a certain time would calmly send word that he was unable to attend. In New York, Pennsylvania, and Virginia, when this happened, the offender was

[18] *Va. H. of D. Journal,* October-December, 1788. Up to November 6, W. Cabell, the regular chairman, reported each time; November 6, pp. 27-28, Bullit reported; November 10, p. 33, Bland; November 15, p. 45, both Cabell and Bullit; November 24, 27, 28, Carrington, New, and Callis; December 17, Wilkinson. In the same session reports from the committee on claims were presented by five different men.

[19] *N. Y. H. Journal,* August 25, 1779, p. 6. *Md. H. Journal,* November 11, 1783, p. 2. *Va. H. of B. Journal,* February 28, 1752, pp. 7-8. In 1777, the power was granted to any committee appointed for purpose of gathering evidence, *ibid.,* June 7, 1777, p. 67. *N. C. Col. Recs.,* VII, 352, November 8, 1766. *N. C. St. Recs.,* XVIII, 273, December 4, 1786. *S. C. H. Journal,* January 23, 1787, pp. 11-12; January 27, p. 25. *Ga. Revol. Recs.,* III, 40, January 3, 1782.

declared guilty of contempt of the authority of the House, and placed under arrest.[20]

After the summons had been issued, the witness was under the protection of the House. In New York, anyone who prosecuted a person for statements made in testifying before a committee was declared guilty of breach of privilege.[21] In both Virginia and Georgia committee witnesses, like members of the assembly, were privileged from arrest during their attendance, and also during the journey to and from the place where the hearing was held. Finally, in Virginia, persons who attempted to tamper with witnesses, or prevent them from appearing or giving evidence, were considered guilty of high crimes and misdemeanors.[22]

The marked variations in the number and importance of standing committees in the early states affords an excellent standard for determining the stage of development which they had reached. Another side light on this same thing is to be found in the relatively crude arrangements made for committee meetings. When the state houses were built, standing committees had not been of sufficient importance to attract attention to their needs, consequently in only rare cases had rooms been provided in which they could meet. Not only were the comfortable, almost luxuriously furnished, committee quarters of the present day unknown, but in many states committees were actually forced to meet in private houses. In New York, New Jersey, Virginia, and North Carolina the members of committees assembled for work in some such place as "the House of George Burns," "the House of

[20] *N. Y. H. Journal,* May 8, 1769, p. 53. *Pa. H. Journal,* March 3, 1759, p. 24. *Va. H. of B. Journal,* March 26, 1767, p. 97; March 28, 30, pp. 100, 103.

[21] *N. Y. H. Journal,* December 28, 1768, p. 66.

[22] *Va. H. of B. Journal,* December 8, 1769, p. 324. *Ga. Col. Recs.,* XIV, 152-153, November 27, 1764.

the Widow Stillwell," or perhaps at Mr. Whitehead's or Jacob Hyer's.[23] To be sure other places were sometimes used, but they all show that the standing committee was not nearly as important as it is at the present time. In Massachusetts they met in the "upper rooms" of the old statehouse, probably on the third floor, which is now so insecure that only a few visitors are permitted to go up there at one time, or in the "Chambers of the Porches," in the same building.[24] In the other states meeting places were also provided, somewhat more suitable than private houses, for the discussion of important business. In New Jersey, they sometimes met in "the old Meeting House,"[25] and in New York in the Council chamber, or in the Speaker's room.[26] In Pennsylvania there was a "Committee Room at the East End of the State-House,"[27] and by 1779 "Committee Rooms" were provided in Virginia.[28]

The usual time for committee meetings was in the evening, after the daily session.[29] In Virginia they also met in the morning, before the House assembled, and sometimes during the hour supposed to be set apart for morning prayer.[30] In Massachusetts, however, they met during the regular sessions of the assembly, provided, of course, that there was a quorum without them. When

[23] *N. Y. H. Journal,* June 5, 1753, p. 339; June 29, p. 348. *N. J. H. Journal,* September 7, 1776, p. 66; September 12, p. 10; March 1, 1777, p. 90.

Bruce, *Inst. Hist. of Va.,* II, 479; Rowland, *Life of George Mason,* I, 335. *N. C. Col. Recs.,* V, 795; VIII, 141.

[24] *Mass. H. Journal,* July 31, 1775, p. 27; May 28, 1779, p. 10.

[25] *N. J. H. Journal,* November 23, 1776, p. 47.

[26] *N. Y. H. Journal,* June 4, 1751, p. 309; November 20, p. 326.

[27] *Pa. H. Journal,* October 17, 1761, p. 189.

[28] *Va. H. of D. Journal,* October 20, 1779, p. 16.

[29] Rowland, *George Mason,* I, 335, Mason to Lee. *N. C. Col. Recs.,* V, 975; VIII, 141. *S. C. H. Journal,* March 3, 1787, p. 215.

[30] *Va. H. of B. Journal,* December 8, 1769, p. 324.

measures of special importance were under consideration, the committees would be called in.[31]

The active leaders must have found it very burdensome to spend all day in regular session and then devote half the night to committee work. In an exceptionally busy season they not only had little time for pleasure, but were even deprived of their sleep. A member of the Provincial Congress of North Carolina found that the business of getting the new government on its feet was no easy task. "In my time," he wrote, "I have been used to business, both public and private, but never yet experienced one-fourth part of what I am now necessarily obliged to undertake—we have no rest, either night or day. The first thing done in the morning is to prepare every matter necessary for the day—after breakfast, to Congress—there, generally, from 9 until 3 o'clock—no sitting a minute after dinner, but to different committees; perhaps one person will be obliged to attend four of them between 4 o'clock and 9 at night—then to supper, and this generally brings us to 12 at night. This has been the life I have led since my arrival here—in short I never was so hurried."[32]

To be sure, that was an exceptionally busy period, and it is doubtful if representatives were ordinarily so active. The leaders may have worked hard and long, but apparently they were the only ones who took their committee duties very seriously. All the way from Pennsylvania to Georgia there was the same tale of

[31] *Mass. H. Journal,* June 8, 1776, p. 57, the House ordered "That all the Committees of the House be called in." *Ibid.,* January 27, 1779, p. 114. At one time, when the Senate proposed to adjourn, because of small attendance, the House reported that it was unnecessary, because a quorum was present, and there were enough besides to "set" on all the important committees. September 18, 1781, p. 212. Again, when the House wished the joint committees to sit immediately, the Senate reported that matters of importance were being discussed, so that members could not be spared to sit on committees. January 30, 1782, pp. 499-500.

[32] *N. C. Col. Recs.,* X, 1033, appendix, Jones to Iredell, April 28, 1776.

failure to attend meetings. Usually members dodged their responsibilities in this respect, and it took much prodding on the part of the chairman to get them to do anything. In the Pennsylvania House a member once remarked that "Every Gentleman must be sensible of the difficulty with which Committees are collected . . .;" and again, "business consigned to a large Committee was done by a few of its members or not at all . . ."[33] In regard to a certain petition which had been referred by the Virginia House to a select committee, George Mason wrote that the members seemed inclined to favor it, "if this can properly be said of men who are too indolent to attend to anything. The Committee have met, or rather failed to meet, at my lodgings every morning and evening for this fortnight."[34] In North Carolina, an irate legislator once complained that "The want of punctuality among members in attending committees has called for the exercise of more philosophy than I possess."[35] In Georgia carelessness in this respect became so general that the House was forced to impose a fine of six pence on members who did not come to a committee meeting within fifteen minutes of the time fixed by the chairmen; if they did not come at all, they were fined two shillings.[36]

This general lack of interest in committee meetings may have been only another manifestation of the tendency of the legislatures in the middle and southern states to imitate procedure in the House of Commons, for complaint was made about the same difficulty there in 1604.[37]

[33] *Pa. Debates,* October 26, 1787, p. 8.

[34] Rowland, *George Mason,* I, 335, Mason to Lee.

[35] *N. C. St. Recs.,* XVI, 613, May 1, 1782.

[36] *Ga. Col. Recs.,* XIII, 590, November 12, 1761; 594, November 13.

[37] *Commons Journal,* I, 169, April 12, 1604. "Upon a Motion made touching the slow Proceeding and Dispatch of such Bills and Business, as were depending in the House, which grew (as was said) by the Non-

It is clear that members did not look upon their committee duties as a pleasure, and such complaints lead to the suspicion that our forefathers were not filled with that frantic desire to play their parts in legislative matters which has sometimes been attributed to them.

In conclusion, so far as the state legislatures are concerned, it can be said that by 1790 the standing committees had become the most conspicuous feature of the organization of nearly all the American assemblies. Before very many years the same system had been adopted by the national House of Representatives. Thus at the present time the type of organization in the British House of Commons is fundamentally unlike that in the American House of Representatives. In England the popular branch of the legislature is built up around the Cabinet, a group of party leaders organized as an administrative body. In the United States, on the other hand, where the legislators take no part in actual administration, the lower house is split into numerous standing committees. But in the beginning the House of Commons was in principle not so very different from the average colonial assembly, and in both places the conception of what a legislature ought to be was practically the same. A study of committee history during this period brings out the fact that by 1760 the American legislature had reached a point where slightly different conditions might very easily have forced it into a line of development parallel to that taken by the popular house of Parliament.

At the beginning of the seventeenth century, the House of Commons had a system of committees very much like those in use later in some of the American

attendance of a sufficient Number at Committees; it was *Ordered*, That if Eight of any Committee do assemble, they might proceed to a Resolution in any Business of the House.''

colonies. But just at the time when this form of organization was developing, Parliament began its long and bitter quarrel with the Stuart kings. If this had been merely a struggle between two political parties, it would not necessarily have affected institutional development. But it was a conflict between two opposing theories of government, or two sources of authority, so that there was at stake not the mere question of party control, but the rights and privileges of the House of Commons. Henceforth, for three-quarters of a century, the chief business of Parliament was not to legislate, but to protect its rights against the aggressive supporters of the prerogative. Such a situation called for a firmly knit, well-organized body, the guidance of which could be entrusted to a few active leaders. Consequently, because they were designed for purposes of legislation rather than for a defensive campaign, the committees which had grown up gave way to a system of control by party leaders. By the time of the flight of James II, Parliament had become accustomed to that kind of organization, and the long uninterrupted Whig rule of the first half of the eighteenth century served to make it permanent. Thus when the House of Commons finally found itself safe from all royal attacks upon its privileges, the Cabinet had superseded the system of standing committees as the chief factor in lawmaking machinery.

In the American colonies, standing committees were introduced just as they had been in the House of Commons. Then, in the same way, there developed the friction between prerogative and people which had resulted in civil war in England. But in the colonies the struggle did not last nearly as long as it had in the mother country. To be sure some of the legislatures produced the "Junto," a primitive kind of central organization, and the governors were generally engaged in

altercations with the assembly. But the lower house easily made good its right to a predominant place in colonial government, and the royal executive was somewhat contemptuously thrust aside. Trouble did not become acute until the English officials tried to regain some of the lost ground, and then royal authority was thrown off once for all. Moreover, for the first few years after the war party rivalry almost disappeared in the new states, so that there was no real necessity for strong centralization in the lower house. Instead of being put into a state to resist a long siege, the assemblies were therefore organized primarily for purposes of legislation, and the standing committee became the most important feature of their mechanism. The tendency toward a parliamentary form of government, the germ of which existed in the "Junto," thereupon came to an end.

The only exception to this general trend was in North Carolina, where the legislature was built up around the central committee on public bills. Other standing committees were used there, but the prominence of that one made the assembly resemble the English Parliament more closely than the other American legislatures. In that one state the quarrels between governor and assembly had been exceedingly bitter, and consequently there was more need for a closely organized lower house. The government was always in trouble, and for one period of seven years several counties refused not only to send representatives to the legislature, but also to pay taxes.[38] Because of this continual turmoil, North Carolina became accustomed to a centralized assembly, and that form of organization was retained, as it had

[38] *N. C. Col. Recs.*, IV, preface, p. xix. Some of the counties objected to the royal order regulating the number of representatives they might send, so from 1747 to 1754 they withdrew from participation in the government; during these years there was no regular assembly.

been in England, after the conditions which made it necessary had disappeared.

The trend of development in Parliament, and in the colonial and state legislatures during this period, indicates clearly that the steady normal growth of the average Anglo-Saxon assembly would result in a system of standing committees. Such a conclusion is suggested by procedure in Parliament in the early part of the seventeenth century, and is confirmed by the history of committee activity in America, especially after 1776. In no colony save one was the constitutional strife severe enough to force the assemblies into a posture of defense, and to hold them there until that form of organization became permanent. Admirably as it has worked during the long period of peace which has followed the constitutional struggle, the custom of entrusting the management of Parliament to the party leaders was called into being and given permanence by the severity of that conflict. Had the same difficulties arisen in America after the Revolution as they did in England after the Great Rebellion, the legislatures would have been compelled to adopt a similar system of central control.

CHAPTER VIII

THE FIRST CONGRESS

The period of the Revolution and Confederation was primarily one of governmental reorganization, during which colonies were being transformed into states, and charters into constitutions. In this remodeling the Americans had the advantage of years of practical training back of them, so that not very much experimentation was necessary. For that reason serious blunders were avoided, and when the constitutions were finally drawn they proved to be sensible, workable instruments, providing for governmental structures very similar to those of the past. In like manner the members of the Federal Convention showed a tendency to follow well-known precedents as closely as possible. To be sure their task was more complicated than that of any state convention, because there had been so little experience with federal government in America. But even they were called upon, not to invent new principles, but rather to adapt and apply familiar ones. This was particularly true in the case of the legislature. It was taken for granted that the federal assembly would not differ in its main outlines from any one of those of the states.

There were, however, two problems to be solved, both puzzling, perhaps even more troublesome than would have been the working out of some wholly new idea. In the first place, it was necessary to adjust the theory of representation to the requirements of a federal government. Some arrangement was needed which

would provide for the interests, and secure the participation, of the voters on the one hand and of the several states on the other. Then the fields in which the new Congress must and might operate, as well as those from which it was wholly debarred, had to be surveyed and bounded with no little care. These were vexing questions, and the handling of them demanded both finesse and wisdom. To many Americans who had fought to escape the meddling of one central government the establishment of another was nothing less than a gratuitous insult, and their susceptibilities could not be altogether ignored.

Although all these constitutions, both state and national, were based largely upon colonial and contemporary precedents, there was one striking omission. There is not a reference in any of them to the political party. They furnish the framework of government, and provide for the necessary number of departments and officials, but they disregard the very agency that made possible the successful working of the whole system. The fact that party organizations dominated colonial governments apparently escaped notice. It may be that because there was only one party during and for a time after the war, the conventions felt that the days of such activity were over. Or their neglect may be accounted for by an impression that parties were things of ill-repute, forces of the under-world of government, known to politicians, but not referred to in the polite society of respectable statesmen. Whatever may have been the reason, the constitutions were permeated with that eighteenth century obsession that all government, like ancient Gaul, was divided into three parts. Executive, legislative, and judicial departments were duly created and separated, but the first two proved to be in the future as they had been in the past merely the instru-

ments of the majority party. As left by the Constitution, the government was externally complete, but sadly lacking within, like a motor car minus the engine. It might be added that this defect, undeniably a vital one, was subsequently remedied by Alexander Hamilton.

The new system was scheduled to begin operations on March 4, 1789, but for various reasons there was a delay of nearly a month in getting under way. To those curious or interested citizens who were waiting to see how the House of Representatives would handle itself this circumstance must have seemed like an unpropitious beginning. Although there were but fifty-nine members in all, only thirteen of them were present on the date named, and it was not until April 1 that the organization was completed.[1]

In personnel the first national House of Representatives did not differ materially from any one of its thirteen prototypes in the states. Suffrage was extended to those qualified to vote for the "most numerous branch of the State legislature," so there was no great likelihood that the national House would contain very much more in the way of talent and ability than its contemporaries.

[1] When the time for the third session arrived interest had been so completely aroused that no time was lost. The following extract shows what difficulties were encountered by members from a distance. "The punctuality of the members has been such that we were within *one* of forming a quorum of both houses on the *first* day, a circumstance well worthy of note. We have today got over all preparatory ceremonies and shall now go seriously to work. I cannot foretell whether the Campaign will be a bloody one or not—it has opened with ominous circumstances; by taking the field at a season when other combatants go into winter quarters. Many of our champions have from the combined inconveniences of tempestuous weather and bad roads met with terrible disasters in repairing to the Camp. Burke was shipwrecked off the Capes; Jackson and Mathews with great difficulty landed at Cape May and travelled 160 miles in a wagon to the City. Burke got here in the same way. Gerry and Partridge were overset in the stage; the first had his head broke and made his Entree with an enormous black patch; the other had his ribs sadly bruised and was unable to stir for some days. Tucker had a dreadful passage of 16 days with perpetual storms." "The South Carolina Federalists," *Am. Hist. Rev.*, XIV, 779.

Every legislative body is something of a mirror, so to speak, in which the voters are reflected with a surprising degree of accuracy, so in this particular instance the members were good eighteenth century Americans, average representatives of the ruling class of the time. Many of them had the advantage of more or less experience in their own local assemblies. Frederick Augustus Muhlenberg, the first Speaker of the House, had been trained in the duties of his office in Pennsylvania. He seems to have been blessed with common sense and tact, about the only qualifications needed at the time, because the speakership was not originally a political office.

Perhaps an even more prominent member was James Madison, the "little Virginian," who brought with him a fund of information concerning matters legislative and governmental. Because of his active part in the Federal Convention he was more widely known than Muhlenberg, and he rather than the Speaker was looked upon as the "first man" in the House.[2] While he was a man of intellectual ability, he lacked force and driving power, and was as guileless as a child in matters pertaining to clever political manœuvring. Madison, wrote Fisher Ames, "is probably deficient in that fervor and vigor of character which you will expect in a great man. He is not likely to risk bold measures, like Charles Fox, nor even to persevere in any measures against a firm opposition like the first Pitt. He derives from nature an excellent understanding, however, but I think he excels in the quality of judgment. He is possessed of a sound judgment, which perceives truth with great clearness, and can trace it through the mazes of debate, without losing it. He is admirable for this inestimable talent. As a reasoner he is remarkably perspicuous and methodical. He is a studious man, devoted to public

[2] Ames, *Works*, I, 36.

business, and a thorough master of almost every public question that can arise, or he will spare no pains to become so, if he happens to be in want of information. . . . His clear perception of an argument makes him impressive, and persuasive sometimes. . . . Upon the whole he is an useful, respectable, worthy man. . . . Let me add, without meaning to detract, that he is too much attached to his theories, for a politician. He is well versed in public life, was bred to it, and has no other profession. Yet, I may say, it is rather a science, than a business with him. He adopts his maxims as he finds them in books, and with too little regard to the actual state of things."[3]

Among others deserving mention, the young member just quoted, Fisher Ames of Massachusetts, was one of the most promising. Early in his career he attracted attention through his vigorous advocacy of a powerful federal government, and he was one of the most enthusiastic of Hamilton's supporters. He was even more clear-headed than Madison in his reasoning, and he certainly surpassed him in forcefulness of character. His own mind worked so rapidly that he was inclined to be intolerant of slowness in others, and he was continually expressing disgust at the deliberate and ponderous movements of the legislature. It was ill health rather than lack of ability that prevented him from rising to a position of prominence in national affairs.

On the whole, the first House of Representatives would compare favorably with other bodies of its kind. It could apparently be depended upon to accomplish the

[3] Ames, *Works*, I, 48-49. In an earlier letter Ames wrote that Madison was a "man of sense, reading, address, and integrity, as 'tis allowed. Very much Frenchified in his politics. He speaks low, his person is little and ordinary. He speaks decently, as to manner, and no more. His language is very pure, perspicuous, and to the point," *ibid.*, I, 35-36.

work for which it was elected, and in so doing it would very likely waste as much time in debating trifles and in overemphasizing imaginary difficulties as its contemporaries were in the habit of doing. Such is the way of democracy. Those who expected more of it, who were inclined to idealize it and to hope for great and even spectacular achievements were disappointed, for when it finally settled down to work it proved to be very legislature-like in its movements. At the end of his first eight weeks in Congress, Ames wrote: "I felt chagrined at the yawning listlessness of many here, in regard to the great objects of the government; their liableness to the impression of arguments *ad populum;* their state prejudices; their overrefining spirit in relation to trifles; their attachment to some very distressing formalities in business, and which will be a curse to all despatch and spirit in transacting it. I compared these with the idea I had brought here, of demi-gods and Roman Senators, or at least, of the first Congress. The objects now before us require more information, though less of the heroic qualities, than those of the first Congress. I was sorry to see that the picture I had drawn was so much bigger and fairer than the life. . . . But since, I have reflected coolly, that in all public bodies, the majority will be such as I have described—I may add, ought to be such; and if a few understand business, and have, as they will, the confidence of those who do not, it is better than for all to be such knowing ones; for they would contend for supremacy; there would not be a sufficient principle of cohesion. . . . The House is composed of very good men, not shining, but honest and reasonably well informed, and in time they will be found to improve, and not be much inferior in eloquence, science, and dignity, to the British Commons. They are patriotic enough, and I believe there are more stupid

(as well as more shining) people in the latter, in proportion.''[4] Two days later he wrote again: ''We are not in haste, or at least, have not learned to be in a hurry to advantage. I think it is the most dilatory assembly in the universe.''[5]

In constructing the national legislature, the Federal Convention did little beyond laying down the broad outlines. It provided for the Speaker of the House, but it left practically all other matters of organization and all the details of procedure to the House itself. With the wealth of precedents available in the journals of contemporary state legislatures, there was really no definite reason why the first Representatives should not have formulated rules of procedure which would enable them to go ahead smoothly and rapidly in the transaction of business. They all knew, or could easily discover, how laws were made by their friends at home. And yet, in spite of all their experience, and their really remarkable opportunities for observation, they wasted time for want of good methods. At the end of two months, Madison wrote that ''in every step the difficulties arising from novelty are severely experienced, and are an ample as well as just source of apology. Scarcely a day passes without some striking evidence of the delays and perplexities springing merely from the want of precedents. Time will be a full remedy for this evil; and will I am persuaded, evince a greater facility in legislating uniformly for all the States than has been supposed by some of the best friends of the Union.''[6]

The cause of that uncertainty, or lack of surefootedness, was probably the fact that the members looked upon themselves as parts of an entirely new

[4] Ames, *Works*, I, 44-45. The ''first Congress'' referred to was the Continental Congress.

[5] *Ibid.*, I, 50.

[6] Madison, *Writings*, V, 373.

system.[7] They seem to have preferred to adopt a very few familiar principles, just enough to make possible the transaction of business, and to wait for further rules until time and experience should reveal their exact needs. It is not strange that the members should be impressed with the importance of their position, and should go slowly in order to avoid possible errors.

The outstanding feature of procedure in the House was the important part played by the committee of the whole. Much of the business in the House of Delegates of Virginia was transacted in that way, and the Virginians were influential enough to impose their methods upon the federal House, in spite of the grumbling opposition on the part of members from other sections. The rules were so framed as to permit almost unrestricted freedom of debate,[8] and every member was given unlimited opportunity to satisfy his own craving to talk, and incidentally to convince his watchful constituents at home that he was not neglecting their interests. As a matter of fact, this extensive use of the informal session was not wholly bad from the democratic point of view. The House was so small that it was a genuine deliberative assembly, in which national questions could be discussed and considered from every possible angle. It was in committee of the whole that Congress worked out the first tariff bill, and also the main outlines of such important measures as the laws organizing the executive departments.[9] After the general principles

[7] *Annals*, 1 Cong. 1, 383-384. In introducing the question of new executive departments, Boudinot of New Jersey said that the departments under the "late constitution" were not to be considered as models, because of the changes brought about by the new constitution, and because of the "new distribution of legislative, executive, and judicial powers." This idea of a clean slate may have influenced Congress.

[8] *Ibid.*, 1 Cong. 1, 99, 101.

[9] *Ibid.*, 1, 106-109, 125-126, 144-147, 368, 370, 383-384, 399, 412, 427-428; 1 Cong. 3, 1888-1890.

were once determined, select committees would be appointed to work out the details, and to frame bills in accordance with the decision already agreed upon in committee of the whole.[10]

The chief weakness in the system was that it presupposed a higher general level of intelligence among the members than was actually to be found. There were a few leaders, but only a few, who could carry on a profitable and illuminating discussion of general principles; the rank and file were speedily lost in a fruitless if not inane debate over minor details. Naturally the more brilliant members were disgusted at the waste of time necessarily attendant upon the process. To quote Ames again, it was "certainly a bad method of doing business. Too little use is made of special committees. Virginia is stiff and touchy against any change of the committee of the whole. . . . They are for watching and checking power; they see evils in embryo; are terrified with possibilities, and are eager to establish rights, and to explain principles, to such a degree, that you would think them enthusiasts and triflers."[11]

The same active commentator also described a session of the committee of the whole at work on a bill. "We consider it in committee of the whole, and we indulge a very minute criticism upon its style. We correct spelling, or erase *may* and insert *shall,* and quiddle in a manner which provokes me. A select committee would soon correct little improprieties. Our great committee is too unwieldly for this operation. A great, clumsy machine is applied to the slightest and most delicate operations—the hoof of an elephant to the strokes of

[10] *Annals,* 1 Cong. 1, 125, 258, 381, 412; 1 Cong. 2, 1094. Considerable work was done by these select committees, especially after the first session. Congress was in session from ten to three, "before and after which the business is going on in committees." Washington, *Writings,* XI, 484.

[11] Ames, *Works,* I, 64.

mezzotinto. I dislike the committee of the whole more than ever. We could not be so long doing so little, by any other expedient.'"[12]

In view of their prominence in the state legislatures, it might naturally be supposed that standing committees would be called into being to transact much of the routine work of Congress. Such, however, was not the case. To be sure there was a committee of elections,[13] appointed to inspect the credentials of members, and to investigate facts in connection with contested elections, but strictly speaking it performed no legislative work. Then, about two months before the end of the first session, a standing committee of ways and means was appointed, but its career was exceedingly brief. Finance committees in many of the states were familiar institutions, and naturally members who were acquainted with them suggested that the federal House would do well to provide itself with similar machinery. The question arose during the debate on the bill for organizing a treasury department. Livermore was opposed to giving any single official authority to submit plans for raising revenue. If the House itself was not in a position to do all such work, it ought to appoint a committee for that purpose. Gerry agreed that a committee of ways and means would be of great value in the transaction of financial business.[14] A month later Fitzsimons urged definite action in the matter. "If we wish to have more particular information on these points," he suggested while speaking of the revenue, "we ought to appoint a Committee of Ways and Means, to whom, among other things, the estimate of supplies may be referred, and this ought to be done speedily . . ." His suggestion met with approval, and a committee of ten was ap-

[12] Ames, *Works*, I, 61.
[13] *Annals*, 1 Cong. 1, 122.
[14] *Ibid.*, 621, 625.

pointed.[15] This appointment was made on July 24, 1789. On September 11, Alexander Hamilton entered upon his work as Secretary of the Treasury.[16] On September 17, the committee of ways and means was "discharged from further proceeding on the business referred to them," and it was "referred to the Secretary of the Treasury, to report thereon."[17] Henceforth there was hardly a mention of such a committee in Congress until December, 1795, when Gallatin secured the appointment of the permanent committee.

This transfer of authority from a committee of the House to Alexander Hamilton suggests the theory that Congress may have considered the newly created heads of departments as instruments not only of the president, but of the legislature as well. If that was the case, standing committees would of course be superfluous, because there was no particular need for a duplication of machinery.

In the case of the departments of Foreign Affairs, or of State, as it was called shortly after, and of War, the statutes creating them contain nothing to warrant such an assumption. The secretaries of those departments were executive officials, required to perform whatever duties the president might entrust to them. The laws nowhere suggest that Congress enjoyed any authority to give them orders, or to assign any of their duties.[18]

Because of the intimate relationship between Hamilton and Congress, the status of the Treasury department merits a more careful examination. The Constitution itself conferred upon the House alone full power to originate revenue bills, and that privilege was very jealously guarded by thoroughgoing democrats. The

[15] *Annals,* 1 Cong. 1, 696-697.
[16] Learned, *The President's Cabinet,* p. 118.
[17] *Annals,* 1 Cong. 1, 929.
[18] *Statutes at Large,* I, 28, 49.

establishment of the department gave rise to a lengthy debate. Boudinot of New Jersey brought up the question in the House, and recommended a law providing for a "Secretary of Finance," whose duties should be to superintend the treasury and finances of the country, and in particular to look after the public debt, revenue, and expenditure. With reference to revenue, Boudinot advised that the new official be given authority to "form and digest plans for its improvement."[19] In the mass of argument called forth by this seemingly sound recommendation two different points of view stand out very clearly. The Federalists, if the name may be applied to them as early as this, approved of Boudinot's recommendation. They pointed out the manifest advantages in having a single, expert official in charge, who would be ready at any time to lay carefully matured plans before Congress.[20]

The opponents of the measure argued that in permitting the secretary to "report" plans, the House would be guilty of giving up power definitely conferred upon it by the Constitution, and also that it would make the official altogether too powerful. One of Madison's colleagues, Page, thought the secretary might be permitted to prepare estimates, "but to go any further would be a dangerous innovation upon the constitutional privilege of this House. . . ." It would establish a precedent, which might be extended until all the "ministers of the Government" might be admitted to the floor to explain and support their plans, "thus laying the foundation for an aristocracy or a detestable monarchy."[21] Tucker agreed with Page. He thought that the granting of the proposed authority to report plans would "abridge the particular privilege of this House."

[19] *Annals,* 1 Cong. 1, 383-384.
[20] *Ibid.,* 617, 619. Ames, *Works,* I, 56.
[21] *Annals,* 1 Cong. 1, 615-616.

Certainly revenue bills could not be said to originate in the House if they were reported by the "Minister of Finance." If the plans were to come from the executive at all, they should be sent in directly by the president, and not by a secretary.[22]

Some of these fears were overcome by an amendment, which limited the secretary's authority to the preparation of plans. He was not given the right to "report" them. Moreover, in no part of the act was the term "executive" department used. Then, too, there seemed to be a general feeling that such an official could easily be held in restraint. Madison wrote that a finance department was under consideration, "to be under one head, though to be branched out in such a manner as will check the administration."[23] Likewise Benson favored a single head, rather than a board, but he "would have the principal officer well checked in the execution of his trust."[24]

As finally drawn, the statute was conspicuously different from those which created the other two departments. It required the Secretary of the Treasury "to digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; to prepare and report estimates of the public revenue, and the public expenditures; . . . to make report, and give information to either branch of the legislature, in person or in writing . . . respecting all matters referred to him by the Senate or House of Representatives, or which shall appertain to his office; and generally to perform all such services relative to the finances, as he shall be directed to perform."[25]

It seems evident that Congress planned to create an

[22] *Annals*, 1 Cong. 1, 616
[23] Madison, *Writings*, V, 371.
[24] *Annals*, 1 Cong. 1, 384.
[25] *Statutes at Large*, I, 65-67.

agent, not for the executive, but for itself. Both by actual phraseology and by implication the head of this department was subject to the legislature, and nowhere does the statute confer upon the president authority to assign duties to the Secretary of the Treasury. Such being the case, it is easy to explain the disappearance of the committee of ways and means. A single official, properly controlled, would be far more useful and far more efficient than a committee, the personnel of which might be subject to change every two years. In a cabinet meeting Hamilton once observed "that as to his department the act constituting it had made it subject to Congress in some points, but he thot himself not so far subject as to be obliged to produce all the papers they might call for."[26] That interpretation was one of Hamilton's own, not warranted by the wording, and certainly inconsistent with the general tone of the law itself.

Nearly thirty years after the law was passed Monroe asserted that it was drawn "by A. Hamilton, who was himself to be the Secretary, and whose object was to establish a direct intercourse between the members of the legislature and himself for his own purposes."[27] Gallatin also had occasion to refer to the differences in these laws creating the departments, and he thought that the distinction was probably made in order to give "Congress a direct power, uncontrolled by the executive" over financial matters. He did, however, query whether "this remarkable distinction, which will be found to pervade all the laws relative to the Treasury Department, was not introduced to that extent in order

[26] Jefferson, *Writings*, I, 190.

[27] J. Q. Adams, *Memoirs*, IV, 217. Mr. Learned quotes this statement, with the comment that it is not worthy of very much credence. *The President's Cabinet*, p. 109.

to give Mr. Hamilton a department independent of every executive control.'"[28]

These statements seem to have been nothing more than theories of Gallatin and Monroe, and unless more evidence appears they cannot be taken very seriously. If Hamilton's activities as party leader throw any light on this subject, it might be safe to say positively that he did not draft the bill. Instead of giving Congress authority over his office, he would have been far more likely to reverse the relationship.

Although the departments of State and of War were not legally subject to Congressional orders, they together with the Treasury department were called upon to participate in the work of legislation. Instead of being referred to standing committees, as would have been the case in state legislatures, some routine business was turned over to cabinet officials. In dealing with certain matters recommended by Washington in one of his speeches to Congress, the House asked the Secretary of the Treasury to prepare and report plans for the encouragement of manufactures, while a similar request concerning a system of weights and measures was sent to the Secretary of State.[29] Not long afterward Hamilton laid before the House a report from the postmaster general, together with a bill drawn by the same official. Although one of the members took exception to this practice of receiving bills from the heads of departments, the custom was not abandoned.[30] At about the same time Madison wrote that the chief measures before Congress were "the plans of revenue and the Militia, reported by

[28] Gallatin, *Works*, I, 66-67.

[29] *Annals*, 1 Cong. 2, 1095. In dealing with other matters mentioned in the speech, the House appointed select committees to bring in bills in accordance with recommendations made.

[30] *Ibid.*, 2, 1114.

Hamilton and Knox.''[31] Later, Jefferson as Secretary of State, drafted a bill ''to promote the progress of the useful arts,'' which was introduced into the House on February 7, 1791.[32]

In addition to depending upon the secretaries for the drafting of an occasional bill, the House also called upon them to deal with certain petitions. In the state legislatures such work would have gone to standing committees, but Congress seemed to feel that the head of a department would answer the purpose just as well as a committee.[33] Surely if it could use the heads of departments in this way, the House might well dispense with standing committees.

Such a loose-jointed organization as this would work smoothly only under certain conditions, which are seldom found in any legislative body. If they expect to evolve the main outlines of important measures in committee of the whole, all the members must work together in a spirit of genuine coöperation and friendliness. Or, to put it in another way, for the successful operation of Congress under that kind of procedure, there must be a total absence of political parties.

These conditions prevailed for a time in the first Congress, so that there was very little factional bitterness or organized party effort. Such a striking peculiarity naturally attracted the attention of the members, some of whom felt impelled to report the phenomenon to their friends at home. One southern member wrote

[31] Madison, *Letters,* I, 501-502.

[32] Jefferson, *Works,* V, 278-280; *Annals,* 1 Cong. 3, 1937. For a similar instance, see Jefferson, *Works,* V, 302-304.

[33] Petitions referred to the Secretary of the Treasury: *Annals,* 1 Cong. 1, 917; 1 Cong. 2, 1395, 1413, 1522; 1 Cong. 3, 1873. To the Secretary of State: 1 Cong. 2, 1572. To the Secretary of War: 1 Cong. 3, 1861, 1963; ''Sundry reports from the Secretary of War, on petitions referred to him were read, and laid on the table.'' These are simply examples, not a complete list.

that he "received great pleasure from observing the liberality and spirit of mutual concession which appear to actuate every member of the House," and that he had "not observed the least attempt to create a party, . . ."[34] Another reported that "Much harmony, politeness and good humor have hitherto prevailed in both houses—our debates are conducted with a moderation and ability extremely unusual in so large a body—consisting of men under the influence of such jarring interests."[35] And even Fisher Ames, who allowed nothing to pass unnoticed, and who certainly would have mentioned party differences if there had been any, wrote that "There is less of party spirit, less of the acrimony of pride when disappointed of success, less personality, less intrigue, cabal, management, or cunning than I ever saw in a public assembly. . . . Measures are so far from being the product of caucussing and cabal, that they are not sufficiently preconcerted."[36]

These statements, it should be noticed, refer to the early part of the session, before the Congressmen had fully recovered from the effects of a strange environment. The first actors on a new stage, mindful of the dignity of their position, and perhaps somewhat in awe of one another, would naturally display not only great consideration, but even mutual respect. Familiarity hardly gets time to breed contempt in the short space of two months.

It was not so much the fault of the individual members, however, as of the very nature of the federal Congress itself that this calm could not endure. Sectional differences, real and imaginary, to say nothing of widely divergent theories of government, were bound to produce

[34] McRee, *Life of Iredell*, II, 258.
[35] "South Carolina Federalists," *Am. Hist. Rev.*, XIV, 776.
[36] Ames, *Works*, I, 61-62.

dissensions, and from factional strife thus generated it is but a short step to party organization with all its accompanying cabals and intrigues. Men capable of drawing conclusions from very evident facts could not remain blind to approaching changes. It is not surprising to find that even while he was rejoicing at the absence of party quarrels, Fisher Ames was carefully analyzing the forces of disruption already at work. He found, it seems, that "Three sorts of people are often troublesome. The anti-federals, who alone are weak, and some of them well disposed. The dupes of local prejudices, who fear eastern influences, monopolies, navigation acts. And lastly the violent republicans, as they think fit to style themselves, who are new lights in politics; who would not make the law, but the people, king; who would have a government all checks; who are more solicitous to establish, or rather to expatiate upon, some high-sounding principle of republicanism, than to protect property, cement the union, and perpetuate liberty. 'This new Constitution,' said one Abner Fowler, in 1787, 'will destroy our liberties. We shall never have another mob in the world.' This is the republicanism of the aristocracy of the southern nabobs. It breaks out daily, tinctures the debates with the hue of compromise, makes bold, manly, energetic measures very difficult. The spectre of Patrick Henry haunts their dreams. They accuse the eastern people with despotic principles, and take no small consequence to themselves as the defenders of liberty."[37] Ames' letter merely indicates that a change might be expected at any moment. Other accounts prove that differences soon made themselves evident. In the course of another month several members had complaints to make about party controversies. Senator Butler, for instance, of South Carolina, wrote

[37] Ames, *Works*, I, 62.

that he was very much disappointed with the new government. "I find," he wrote, "locality and partiality reign as much in our Supreme Legislature as they could in a county court or State legislature. Never was a man more egregiously disappointed than I am. I came here full of hopes that the greatest liberality would be exercised; that the consideration of the *whole,* and the general good, would take the place of every other object; but here I find men scrambling for partial advantages, State interests, and in short, a train of those narrow, impolitic measures that must, after a while, shake the Union to its very foundation."[38]

When the question of the permanent residence came up, intrigues began in earnest.[39] One disconsolate member complained that "amendments in Congress are as much wanted as in the Constitution."[40] A year later whatever regard the members may have had for each others' feelings had pretty much disappeared. By that time "violence, personality, low wit, violation of order, and rambling from the point" characterized at least one debate. Apparently the discussion took such a bitter turn that the papers did not venture to report in full, and we are again indebted to Ames for a vivid description. "The Quakers have been abused, the eastern States inveighed against, the chairman rudely charged with partiality. Language low, indecent, and profane has been used; wit equally stale and wretched has been attempted; in short, we have sunk below the General Court in the disorderly moment of a bawling nomination of a committee, or even of country (rather Boston) town meeting. The southern gentry have been guided by their hot tempers, and stubborn prejudices and pride in regard

[38] McRee, *Life of Iredell,* II, 263-265.
[39] Ames, *Works,* I, 69.
[40] Pickering MSS., XIX, 172.

to southern importance and negro slavery . . . they have shown an uncommon want of prudence as well as moderation; they have teased and bullied the House out of their good temper, and driven them to vote in earnest on a subject which at first they did not care much about."[41]

The later debate on the permanent residence exasperated the young member from Massachusetts. "I care little where Congress may sit. I would not find fault with Fort Pitt, if we could assume the debts, and proceed in peace and quietness. But this despicable grogshop contest, whether the taverns of New York or Philadelphia shall get the custom of Congress, keeps us in discord and covers us all with disgrace. . . . It is barely possible for any business to be more perplexed and entangled than this has been. We have fasted, watched, and prayed for the cause. I never knew so much industry and perseverance exerted for any cause. Mr. Sedgwick is a perfect slave to the business. Mr. Goodhue frowns all day long, and swears as much as a good Christian can, about the perverseness of Congress." Then with reference to finance he wrote: "We are passing the ways and means bill. We do so little and behave so ill in doing it that I consider Congress as meriting more reproach than has yet been cast upon it."[42]

This comparatively sudden appearance of partisan differences made possible and even necessary the creation of a well-organized legislative machine. No faction could afford to sit idly by and rely upon a discussion in committee of the whole to evolve and formulate its

[41] Ames, *Works*, I, 75. *Cf.* Maclay, *Journal*, p. 222. "The House have certainly greatly debased their dignity, using base, invective, indecorous language; three or four up at a time manifesting signs of passion, the most disorderly wanderings in their speeches, telling stories, private anecdotes," etc.

[42] Ames, *Works*, I, 80.

favorite measures. Still less could it hope to secure the enactment of its policies without a concerted effort to win votes. The fear that their opponents might resort to those unparliamentary but extremely effective tactics already well known to the state legislatures compelled them all to resort to the same methods. Instead of waiting for action in committee of the whole, the party leaders would decide upon their policies and draft bills in accordance therewith in party councils. The scene of actual legislation would be shifted from Congress to the caucus.

The Federalists were the first to profit by this division of the House into party groups, partly because they were in the majority, but more especially because they enjoyed the tremendous advantage of able leadership. Temperamentally more of a philosopher than a general, Madison himself was never able really to command a majority, while Jefferson, the creator of the Republican party, was still laboring under the delusion that as an executive official he must keep clear of Congress. Opposed to him was the great Federalist chieftain, Alexander Hamilton, who stood without a peer as an organizer and director of party forces.[43] His ready intelligence grasped the truth at once that Jefferson spent more than ten years in learning: that not even the Constitution of the United States could keep apart two such inseparable factors in government as executive and legislature. His official position naturally brought him into close contact with Congress, and enabled him to see that such a loosely organized body was simply waiting for a commander. The mere fact that he was not a member was not the slightest obstacle to him, because it was easier to dominate Congress indirectly, through the medium of a political party, than directly from the floor.

[43] Adams, *Gallatin*, p. 268.

By the winter of 1790, Hamilton was attracting attention because of his influence over Congress. In March of that year in the course of a debate on an appropriation bill, one Jackson moved an amendment, providing for an appropriation for clearing the Savannah River. In reply to objections made to his amendment, he remarked that "according to the ideas of some gentlemen, the House had no right to add to the appropriations proposed by the Secretary," and that "according to this doctrine, the whole business of Legislation may as well be submitted to him, so in fact the House would not be the Representatives of their constituents, but of the Secretary."[44]

In the diary of Senator Maclay there are several brief but pithy comments which reveal both the extent and the nature of Hamilton's power in Congress. "It really seems," he wrote, "as if a listlessness or spirit of laziness pervaded the House of Representatives. Anything which comes from a Secretary is adopted almost without any examination." Referring to the bank bill, he complained to the pages of his diary that "It is totally in vain to oppose this bill." "Nothing," he wrote, "is done without him." Sometimes the democratic senator seemed ready to throw up his hands in despair at the total inability of the opposition to stem the tide of Hamiltonian legislation. Some such state of mind must have been responsible for the following: "Were Eloquence personified and reason flowed from her tongue, her talents would be in vain in our assembly; . . . Congress may go home. Mr. Hamilton is all-powerful, and fails in nothing he attempts."[45]

Such general assertions would not necessarily mean very much by themselves, but they are supplemented by

[44] *Annals*, 1 Cong. 2, 1499.
[45] Maclay, *Journal*, pp. 246, 364, 385, 387.

occasional references both to specific instances of Hamilton's activity in Congress, and to his methods of operation. For instance, Maclay mentions four separate measures, the assumption, bank, and excise bills, and a resolution regarding the mint, all of which were passed in spite of opposition, largely through the influence and personal efforts of Hamilton himself.[46]

His success was due in large measure to his careful oversight of the whole process of legislation. Maclay even went so far as to assert that "Hamilton prepares all matters for his tools."[47] Then, in order to prevent his measures from falling into the hands of an ill-disposed select committee in Congress, the able secretary looked after the appointment of some committees himself.[48] If the committee needed the benefit of his advice, he was ready to give it, of course, and in some cases he even went so far as to attend committee meetings,[49] to guard against the danger of a slip at any stage.

After the preliminary steps had been taken, and the measure was on its way through Congress, Hamilton spared no pains to secure its passage. In case its success was doubtful, the measure would be held back, until the end of the session if necessary, or at least until a majority in its favor was certain. Referring to the resolution on the mint, Maclay charged that Hamilton "kept back this exceptionable business till there would be no time to investigate it," and that, finally, "it was foully smuggled through."[50]

[46] Maclay, *Journal*, pp. 209, 355, 385, 409.

[47] *Ibid.*, pp. 409, 389.

[48] *Ibid.*, p. 331; "Everything, even to the naming of a committee, is prearranged by Hamilton and his group of speculators. . . ."

[49] *Ibid.*, p. 385.

[50] *Ibid.*, p. 409. *Cf.* 208: " 'Twas freely talked of that the question was to have been taken this day on the assumption of the State debts, but Vining, from the Delaware State, is come in, and it was put off until he would be prepared by the Secretary, I suppose. . . ."

One or two more quotations throw interesting light on Hamilton's ceaseless vigilance and activity. "Mr. Hamilton is very uneasy, as far as I can learn, about his funding system. He was here early to wait on the Speaker, and I believe spent most of his time in running from place to place among the members."[51]

Regarding the assumption measure, Maclay wrote: "I do not know that pecuniary influence has actually been used, but I am certain that every other kind of management has been practiced and every tool at work that could be thought of. Officers of Government, clergy, citizens, Cincinnati, and every person under the influence of the Treasury; Bland and Huger carried to the chamber of Representatives—the one lame, the other sick. Clymer stopped from going away, though he had leave, and at length they risked the question and carried it, thirty-one votes to twenty-six. And all this after having tampered with the members since the 22nd of last month, and this only in committee. . . ."[52]

Again he wrote: "In Senate this day the gladiators seemed more than commonly busy. As I came out from the Hall, all the President's family were there—Humphreys, Jackson, Nelson, etc. They had Vining with them, and, as I took it, were a standing committee to catch the members as they went in or came out."[53]

The facts described above do not necessarily prove that there was very much of a party organization in 1790; they merely show that the Secretary of the Treasury was the most important factor in Congress during its first session. Yet the main outlines of party organization were clearly visible even as early as that. In order to secure harmony and unanimity of action,

[51] Maclay, *Journal*, p. 189.
[52] *Ibid.*, p. 209.
[53] *Ibid.*, p. 235.

it was customary for Hamilton's followers to hold meetings of their own. Although the word "caucus" was not applied to these party gatherings, they were caucuses in all but name. It was on these occasions apparently that policies were determined upon, and it was doubtless the assurances obtained in them that enabled Hamilton to estimate the probable vote with such exactness. Maclay refers to "the rendezvousing of the crew of the Hamilton galley," or to a "call of the gladiators this morning," or again to the statement of Speaker Muhlenberg that "there had been a call of the Secretary's party last night."[54] These allusions are made in a perfectly matter-of-fact way, as though such meetings were already looked upon as familiar occurrences.

In view of these facts it is not surprising that Hamilton's financial policy was adopted in the face of bitter opposition. The Federalists were well organized and intelligently directed by a masterful leader, while at first the chaotic group of country gentlemen, the followers of Madison and Jefferson, could do nothing but growl and complain of corruption. From their point of view such success as Hamilton enjoyed could not be honestly won.

When he was complaining about the difficulties due to want of precedents, Madison was not aware of the actual nature of the trouble with Congress. The real need was not more rules, but more driving power. That was furnished by the Hamiltonian or Federalist party organization, and thus the gap in the Constitution was bridged over. The change that had taken place was of such nature as to fill with unpleasant forebodings the democratic minds of the "new lights in politics." One of their ideals was shattered before the new govern-

[54] Maclay, *Journal*, pp. 208, 227, 235.

ment was even two years old. Instead of being a forum, where every member was a peer and no man led, where great principles of government were evolved through the give and take of unrestricted discussion, Congress as such had become in effect a mere ratifying body. The real work of legislation was put in shape, not in the legislature, but in secret session of the majority party. In this organization, unknown to the Constitution and beyond the reach of the rules of either chamber, the executive could work with the party-following in Congress, and secure the adoption of a prearranged program.

This relationship between executive and Congress suggests the theory that the heads of departments may have considered themselves a cabinet similar in some respects to the English cabinet. If that was the case, their interest in drafting bills and in the course of legislative activity is very easily explained. If Hamilton was looked upon as a minister of finance he was not a self-seeking usurper, as Maclay considered him, a man interested in ruling the House partly from love of power, and partly from love of personal gain. Instead he was a part of the ministry, an executive official in charge of finance. Considering himself directly responsible for that department of the government, naturally he would exert himself to the utmost to secure the adoption of his policy. That conception of the heads of the departments as a ministry also explains the attitude of the Federalists toward their chief. If it was his duty to lead Congress, it was just as much its duty to follow. What was a party for if not to sanction and approve the carefully drawn plans of its leaders?

At that time, aside from the respectful manner in which the Federalists supported Hamilton, there was nothing to justify such a theory. In 1797, however, the

views of the Federalists, as voiced by Fisher Ames, do permit such an interpretation. Referring to the Republican attempts to assert the power of the House at the expense of the executive, he wrote: "Our whole system is little removed from simple democracy. What we call *the government* is a phantom, as long as the democrats prevail in the House. The heads of departments are head clerks. Instead of being the ministry, the organs of the executive power, and imparting a kind of momentum to the operation of the laws, they are precluded of late even from communicating with the House, by reports. In other countries they may speak as well as act. We allow them to do neither. We forbid even the use of a speaking-trumpet; or, more properly, as the Constitution has ordained that they shall be dumb, we forbid them to explain themselves by signs. Two evils, obvious to you, result from all this. The efficiency of the government is reduced to its minimum—the proneness of a popular body to usurpation is already advancing to its maximum; committees already are the ministers; and while the House indulges a jealousy of encroachment on its functions, which are properly deliberative, it does not perceive that these are impaired and nullified by the monopoly as well as the perversion of information by these very committees. The silly reliance of our coffee-house and Congress prattlers on the responsibility of the members to the people, &c., &c., is disgraced by every page of the history of popular bodies. We expect, confidently, that the House of Representatives will *act* out of its proper character—for if it should act according to it, we are lost.

"Our government will be, in fact, a mere democracy, which has never been tolerable nor long tolerated."[55]

Evidently Ames believed that Congress needed a guide,

[55] Hamilton, *Works*, VI, 201, Ames to Hamilton.

and he would have had the executive act in that capacity. Harmony of purpose, unity of action, and fixed responsibility for measures passed, all these advantages could have been secured from the operation of such a system. But the Jeffersonians, before they controlled the administration, looked upon such a government as tyranny. Speaking of the House under democratic control, Ames ironically wrote: "We think the executive power is a mere pageant of the representative body—a custos rotulorum, or master of the ceremonies. We ourselves are but passive instruments, whenever the sovereign people choose to speak for themselves. . . ."[56]

The totally opposite theories of government held by the Federalist and Jeffersonian parties were thus clearly brought out in their attitude toward the popular branch of Congress. One would give the balance of power to the executive, and make it the influential factor in legislation, while the other would subject the executive to Congressional control. This difference supplies the key to the history of Congress for several years to come.

[56] Hamilton, *Works*, VI, 202.

CHAPTER IX

REPUBLICANISM IN THE HOUSE, 1792-1800

In spite of the criticism of their opponents, the Federalists continued their work in the second Congress along lines laid down in the first. Measures decided upon by the executive were submitted to the legislature, and duly passed. There was no disregard of the carefully planned policies of Washington and Hamilton, no attempt on the part of the majority in the legislature to take unto itself the whole management of public affairs. If there was any change at all, it was in the direction of an even closer and more systematic relationship between Hamilton and the House of Representatives. For example, when the president recommended certain changes in the excise law, the Federalists had the subject referred to the Secretary of the Treasury, instead of to a committee, on the ground that he was in the best position to furnish the needed information.[1]

Again, when money was needed for the protection of the frontiers, Hamilton furnished the Congressional leaders with the draft of a revenue bill for that purpose.[2] Shortly afterwards, Sedgwick recommended that the Secretary of the Treasury be directed to suggest to the House the best method of raising additional funds for the coming year. In defending his proposition, he assumed that the general principle had been adopted, that the secretary should be considered responsible

[1] *Annals*, 2 Cong. 1, 150-152. Even Sedgwick, a Federalist, objected to this particular reference, on the ground that there was "a manifest impropriety and want of respect in referring any part of the President's Speech, or a law of the Union, to the Head of any particular Department."

[2] *Ibid.*, 349.

for formulating financial measures for the legislature. Without such help, he argued, orderly conduct of finance was impossible. With the infinite detail of general business to look after, the House itself could not devote the necessary time and attention to the subject of revenue.[3]

If these measures were evil, from the Republican point of view, the resolution introduced early the next session was infinitely worse. In the course of the debate on General St. Clair's defeat, some members wished to invite the Secretaries of War and the Treasury to attend the session, in order that they might furnish the House with reliable information. This proposition, however, was going too far even for some of the Federalists, and the motion was lost.[4]

While the Federalists were thus strengthening their organization, their opponents, hardly a party as yet, were being drawn together through their fear of "the aristocrats" in general, and their distrust of Hamilton in particular. They could see nothing but evil in the intimate relationship between secretary and Congress. "Have we, in truth, originated this money bill? Do we ever originate any money bill?" vehemently asked Mercer, in opposing a revenue measure which Hamilton had sent into the House. "It is in my judgment," he continued, "a direct infraction of the letter and spirit of the Constitution, of the principles of free government . . . " Then he concluded: "I have long remarked in this House, that the Executive, or rather the Treasury Department, was really *the efficient Legislature of the country,* so far as relates to the revenue, which is the vital principle of Government. The clause of the Constitution confirming to the immediate Representatives of

[3] *Annals,* 2 Cong. 1, 437-440; Sedgwick's resolution was carried, 31-27, p. 452.

[4] *Ibid.,* 2 Cong. 2, 679, 684, 689.

the people, in this House, the origination of money bills, is converted into a Committeeship of sanction, that never withholds its assent.''[5]

Sedgwick's resolution, referred to above, was the cause of a long debate on this same general question. In permitting the secretary to submit revenue measures, the House was guilty, so Page charged, of a ''dereliction of our duty.'' Findlay opposed the resolution because he thought it was ''contrary to the principles of the government, and inconsistent with the purity and independence of the House of Representatives, whose duty it is exclusively to prepare or originate revenue laws. . . . I consider this mode as a transfer of Legislative authority.''[6] From their point of view, the mode of taxation should have been determined by the House itself, and not until that preliminary work had been done, in committee of the whole, could even the mechanical arrangement of details be delegated to a secretary or to a committee.[7]

The line between the two groups in the House was sharply drawn on this issue. Both agreed that the Constitution conferred upon the House alone authority to initiate revenue bills. The Federalists maintained that the constitutional provision in question did not prevent

[5] *Annals,* 2 Cong. 1, 349-354.

[6] *Ibid.,* 441, 447.

[7] *Ibid.,* 349; *ibid.,* 2 Cong. 2, 693, 694, 700, 704. *National Gazette,* Apr. 12, Apr. 23, Nov. 17, 1792.

The *National Gazette* held that the proper duties of the Secretary of the Treasury were those of a head clerk rather than of a minister of finance. He should look after the subordinate officials in his department, apply the revenue to those purposes for which appropriations had been made, and give information concerning those matters to the President or to Congress.

In addition to being fundamentally wrong in itself, so the Republicans argued, this Federalist policy of dependence on the secretary would lead inevitably to corruption, and private interests rather than the general welfare would become the determining factor in public finance. *Annals,* 2 Cong. 1, 450; Jefferson, *Works,* VI, 103.

the members from seeking expert advice from their own agent, the Treasury department. Any or all of the secretary's recommendations could be rejected by Congress, so the liberties of the people were in no way endangered. Their opponents, however, would receive advice from no one outside the House. As the chosen representatives of the voters it was their duty to perform every task set before them properly and in order.

When dealing with party differences such as this, it is always difficult to estimate to what extent the arguments are based on genuine conviction, and to what extent they are occasioned, consciously or otherwise, by political expediency. Doubtless at this time all of those Republican speakers were absolutely sincere. It is necessary to remember though that the minority very frequently condemns a measure or a method as unconstitutional when the sole argument against it is that it has been successfully used by a victorious majority. The leaders of the opposition, sometimes purposely, sometimes unconsciously, see in the defeat of their party not the simple and inevitable fortune of political warfare, but a very grave attack upon the fundamental principles of the government. The weaker side very frequently poses as the divinely appointed guardian of popular rights, and it voices its protests with a vociferousness inversely proportioned to its actual power.

Be that as it may, the Republicans made it perfectly clear that if they should ever get the upper hand in Congress, they would make short work of Hamilton, and restore to the House what they considered to be its constitutional authority over finance. When the Congressional elections of 1792 assured them of a clear majority in the next House, they settled back to wait for better days, openly announcing their intention of blocking fur-

ther Federalist action by every means in their power.[8] That they at least embarrassed the majority is proved by the words of Hamilton himself, whose contempt for the Republicans was even greater than their distrust of him. " 'Tis not the load of proper official business that alone engrosses me," he wrote to John Jay, "though this would be enough to occupy any man. 'Tis in the extra attention I am obliged to pay to the course of legislative manœuvres that alone adds to my burden and perplexity."[9]

When the third Congress convened, the Republicans, with all the seriousness of reformers with a mission, settled down to their self-appointed task of restoring the constitutional balance. Early in the session the secretary and his clerks were embarrassed by incessant demands for information of one sort and another. To the Federalists, these repeated calls seemed to be nothing but a scheme to perplex their chief, and to discredit him in the eyes of the public.[10]

On February 24, 1794, a resolution proposed by Giles was taken up from the table, after a month's delay, and passed. According to Giles himself, the primary purpose of the manœuvre was "to ascertain the boundaries of discretion and authority between the Legislature and the Treasury Department."[11] On the same day the chaste columns of the *Aurora,* as if by prearrangement, expressed the hope that the darkness in which the operations of the Treasury had so long been concealed would very shortly be cleared up.[12] The fight to eject Hamilton from his post as "minister of finance" was on.

[8] Ames, *Works,* I, 128.

[9] Hamilton, *Works,* X, 29.

[10] Gibbs, *Fed. Adm.,* I, 127, 129.

[11] *Annals,* 3 Cong. 1, 463-464.

[12] *General Advertiser* (Phila. *Aurora*), Feb. 24, 1794. Comparing the obscurity of the Senate with that of the Treasury, the *Aurora* said: "One is a republican—the other, a fiscal darkness. Yet there are some, who

As the bitterness of the controversy steadily increased, Hamilton began to give evidence of irritation. On March 3, as he was reporting on some petitions, he seized the opportunity to ask for relief from troublesome routine of that kind. He suggested that it might be "expedient to place the business of reporting on petitions in some other channel, as the pressure of his official duties, in addition to the extra business of the inquiry into the Treasury Department, will not permit him to pay that seasonable and prompt attention to these petitions which the parties expect, and have just claim to."[13]

The first and most obvious result of Republican control of the House was the end of Hamilton's influence in financial legislation. Unable, or rather unwilling, to accept propositions regarding revenue from the Treasury, the new majority was compelled to evolve some new machinery for handling its financial work. Even to many of them the idea of leaving everything to the committee of the whole seemed hardly practicable, so a select committee was appointed to find out what, if any, additional revenue would be needed, and to report ways and means for raising the necessary sums.[14] Even this seemingly constitutional plan was looked upon with suspicion by some arch-democrats. Page, for instance, said that of the two evils, he really preferred dependence upon the secretary.[15]

The Republican contention that the committee of the whole was the real revenue raising body was given definite expression in the new rules adopted for the next

make us doubt our very senses, by assuring us, that both the walls of the one, and the intricacy of the other, are sufficiently luminous for the *purposes of government.* The *full light* shortly to be expected from one opaque body, (Sen) gives us a *gleam of hope,* that the other may one day be also elucidated."

[13] *Annals,* 3 Cong. 1, 475.

[14] *Ibid.,* 531.

[15] *Ibid.,* 532.

session. Henceforth every proposal regarding a tax had to be discussed in committee of the whole, and the House itself was forbidden to make any increase in the amount of any proposed tax until such increase had been sanctioned by the committee of the whole. In like manner all appropriations were to be first moved and discussed in committee of the whole.[16]

Apparently realizing that so much opposition would render his services useless, Hamilton soon withdrew from office. So far as ejecting him was concerned, the Republican efforts had been crowned with success.[17]

Republican supremacy in the House seriously interfered with the course of systematic, orderly legislation to which that body was becoming accustomed. It was the Federalist party organization rather than any improvement in procedure as such which had made possible the rapid transaction of business. Once their generalship was rendered useless, the House began to drift. The Republicans at first could boast neither organization nor leadership, and worse still they had no constructive policy. The only bond which held them together was their common distrust of Hamilton, and when his power in the House was broken, the party was left on the verge of collapse. "The influence of the Ex. on events," wrote Madison in May, 1794, "the use made of them, and the public confidence in the P. are an overmatch for all the

[16] *Annals,* 3 Cong. 2, 881.

[17] Hamilton left office in January, 1795. His withdrawal did not, however, prevent Washington from calling upon him for advice. "Although you are not in the administration . . . I must, nevertheless (knowing how intimately acquainted you are with all the concerns of this country,), request the favor of you to note down such occurrences as, in your opinion, are proper subjects for communication to Congress at this next session—and particularly as to the manner in which this treaty should be brought forward to that body; as it will, in any aspect it is susceptible of receiving, be the source of much declamation, and will, I have no doubt, produce a hot session." Washington to Hamilton, August 31, 1795. Hamilton, *Works,* VI, 34.

efforts Republicanism can make. The party of that sentiment in the Senate is completely wrecked; and in the H. of Reps in a much worse condition than at an earlier period of the session.'"[18]

Republican incompetence was most clearly revealed in their attempts to deal with problems of finance. Their great object was to restore to the House its control over revenue, but when they found themselves confronted with the disagreeable task of raising money, they were completely at sea. The committee appointed March 26 held daily sessions to work out plans, but progress was very slow. The "fiscal party," as Monroe called the Federalists, urged additional duties on imports, but the "citizen party" favored a tax on land. They "seem backward on the subject in every view:" wrote Monroe, and "regret that an occasion has been made for any great increase. . . . The fiscal party say to the other, you have taken the business from the Tre'y. department, shew y'rselves equal to it, & bring forward some system. The latter replies, the practice of reference has been condemned by the publick voice as other things will be when understood; the rejection of it is a triumph of the people and of the constitution over their & its abuse; but the provision of taxes is not more the duty of those who have been active in the rejection than of those who opposed it. If it is more the duty of one than of the other side, it is particularly that of those who have made taxes necessary.'"[19]

It was perhaps only natural that the Republicans should spend more time in bemoaning the need of taxes than in devising ways and means. But the depths of their ignorance concerning matters political could not be more clearly revealed than it was in this letter. The

[18] Madison, *Writings*, VI, 216.
[19] Monroe, *Writings*, I, 290.

"citizen party" seemed convinced that even though the Federalists were in the minority, they might still be held responsible for doing the work.

In commenting on the new régime the Federalists made no attempts to conceal the depths of their disgust. "The business of Congress this session," wrote John Adams, "is dulness, flatness, and insipidity itself."[20] Ames in his usual graphic style complained that: "Congress is too inefficient to afford the stuff for a letter. No public body exists with less energy of character to do good, or stronger propensities to mischief. We are Frenchmen, democrats, antifeds; every thing but Americans, and men of business."[21]

These difficulties were due partly to the want of real organization within the party itself, and partly to the lack of effective legislative machinery. The financial department in particular was, to quote Gallatin, "quite vacant."[22] Since it was perfectly obvious, even to the Republicans themselves, that an inactive majority could not hope to retain popular confidence, the party was forced to bestir itself.

With the appearance of Gallatin in the House in the fourth Congress, everyone looked forward to an active session.[23] The most pressing problem was the financial one. Although it had been created to act as the agent of the House in such matters, the Treasury department had come to be looked upon with suspicion, and as a good Republican Gallatin could not consent to a restoration of the former relationship. His political creed called for a more extensive participation in governmental affairs by the House of Representatives than Hamilton con-

[20] Adams, *Letters to His Wife*, II, 171.

[21] Ames, *Works*, I, 169.

[22] Adams, *Gallatin*, p. 157, contains Gallatin's own very able analysis of the situation.

[23] Gibbs, *Fed. Adm.*, I, 297.

sidered either necessary or wise. In Pennsylvania Gallatin had become familiar with the standing committee of ways and means, and he secured the appointment of a similar committee in the national House.[24] The committee was appointed to "superintend the general operations of finance." In particular it was expected to report from time to time on the state of the public debt, and on revenue and expenditure.[25] Henceforth, instead of depending on the Secretary of the Treasury for its financial policy, the House would look to one of its own committees. In this way the vacancy created by the overthrow of the earlier agent of the House was partly filled.

At about the same time two more standing committees were appointed, one on claims, and the other on commerce and manufactures. The origin of the later committee on post offices and post roads can be traced back to this fourth Congress, although it did not become one of the regular standing committees until later.[26]

The appointment of these standing committees, particularly of that of ways and means, was in a way a manifestation of the Republican theory of government. From their point of view, the members of the House, as the direct representatives of the voters, ought to be the mainspring of the whole system. Hitherto, the aristocratic Federalists had sold their birthright by permitting the executive to take a more active part in the government than was warranted by the Constitution. The Republicans now planned to bring about the proper balance between the different branches, by broadening at once the scope of the operations of the House, and restricting the executive. It was the better to enable the House to take its assigned part that the new type of organization

[24] Adams, *Gallatin*, p. 157; Gibbs, *Fed. Adm.*, I, 443.
[25] *Annals*, 4 Cong. 1, 152, 159; 4 Cong. 2, 1668.
[26] *Ibid.*, 3 Cong. 2, 877; 4 Cong. 1, 127, 143, 159; 4 Cong. 2, 1598.

was worked out. Just as the heads of departments were looked upon as agents of the executive, so the committees would be considered as the agents of the House. Ames seems to have given expression to the prevalent opinion when he wrote that "committees already are the ministers."[27]

This theory of House supremacy was expressed in another way, in 1796, when the Republicans were trying to abolish the mint. After some discussion there seemed to be an impression that a bill for that purpose would be defeated in the Senate, or vetoed by the president in case it should reach him. Giles thereupon asserted that the House was under no obligation to await action by the other factors in legislation. The representatives of the people could put an end to the objectionable institution themselves, merely by withholding appropriations.[28]

When the question of appropriating the amount called for by the Jay Treaty was laid before the House, the same idea was brought out even more forcibly. According to the Republicans, in any matter pertaining to finance the decision of the House was final, and binding upon all other departments. Consequently the House had a perfect right to refuse to make the appropriations if it saw fit. Thus by declining to act it might prevent the treaty from becoming operative, even though formal ratification had already taken place.

To the frightened Federalists these measures of their opponents could have but one object: the overthrow of all the other departments of the government. Ames in particular felt that the new policy was full of danger. "Such a collection of Secretaries of the Treasury," he wrote in 1795, "so ready on questions of peace, war, and treaty, feel a competence to every thing, and discover to

[27] Hamilton, *Works*, VI, 201.
[28] *Annals*, 4 Cong. 1, 259-260.

others an incompetence for any thing, except what, by the Constitution, they should be,—a popular check on the other branches. To prevent usurpation or encroachment on the rights of the people, they are inestimable; as executive agents, which our disorganizers contend for, they are so many ministers of destruction.''[29] Later he criticised the House because it affected ''to engross all the active and efficient powers of the other branches to themselves, as our folks do. A House that will play President, as we did last spring, Secretary of the Treasury, as we ever do, &c., &c., will play mob at last. Unless it is omnipotent, the members will not believe it has the means of self-defence.''[30] John Adams wrote that: ''There are bold and daring strides making to demolish the President, Senate, and all but the House, which, as it seems to me, must be the effect of the measures that many are urging.''[31] Likewise Goodrich expressed the belief that the Republicans were aiming at ''a total overthrow of the executive systems.''[32]

This Federalist interpretation is not wholly accurate, for it fails to take into account the Republican attitude toward the popular branch of the legislature. Far from trying to overthrow the Constitution, they were trying to reëstablish it. To be sure, political intuition would lead them to emphasize the importance of the only branch of the government under their control, but at the same time there is no valid reason for seriously questioning their good faith so early.

[29] Ames, *Works*, I, 161.

[30] *Ibid.*, 212-213.

[31] Adams, *Letters to His Wife*, II, 210. The same idea, expressed in almost the same words, appeared in the *Columbian Centinel* on April 27, 1796. It was asserted that the aim of the majority was to ''destroy the Executive, to usurp and engross to the House all the powers of the President and Senate.''

[32] Gibbs, *Fed. Adm.*, I, 337; Ames, *Works*, I, 212; *cf. Columbian Centinel*, March 24, 1798.

If Federalist accounts are to be trusted, the new system inaugurated by the Republicans was not a success. Committees apparently did not fill the places left vacant by the secretaries. The most important of them all, the committee of ways and means, incurred the unlimited contempt of the Federalists. This new head of the financial system had not, so Ames believed, "written a page these two years. It collects the scraps and fritters of facts at the Treasury, draws crude hasty results tinctured with localities. These are not supported by any formed plan of coöperation with the members, and the report calls forth the pride of all the motion-makers."[33] Moreover, there seemed to be a feeling that the committee chairmen might become too conspicuous. They had special privileges in the way of access to important documents, and some Republicans felt that they were nearly as dangerous to liberty as the secretaries had been. This impression was responsible for much of the jealousy and rivalry that disturbed the party leaders.[34]

In general it may be said that the fourth Congress was characterized by that hesitation and general disinclination to assume responsibility for which the Republicans were becoming notorious. " 'Tis true the disorganizers have now the power to bring forward their systems of reform," wrote Goodrich, "and that they dare not—it would create a responsibility which above all things they fear; we think the leaders were never more discontented with their lot than at present."[35]

They might have been pardoned for their failure to produce a general system of legislation, on the ground that their measures would never receive the approval of

[33] Hamilton, *Works*, VI, 202.

[34] Gibbs, *Fed. Adm.*, I, 443.

[35] *Ibid.*, I, 298; "Hence, eternal speeches, captious criticisms, and new projects, are found to consume all the time which ought to be devoted to business." *Ibid.*, p. 443.

a hostile president. But revenues were needed, and as they had arrogated to themselves full control of finance, they might be criticised for lack of initiative in that particular field. Instead of showing any inclination to formulate plans they simply drifted along and did nothing.[36]

The Republican failure in the House was due, not as at first to the lack of able leadership, because Gallatin and Giles were both skilled politicians, but to the absence of harmony and coöperation within the party itself. The leaders did not have the rank and file under very strict discipline, and the members themselves displayed an unseemly inability to get along with each other. Federalist commentators dwelt upon this characteristic. Goodrich wrote: "I believe there never was a public body deserved less the public confidence; who were more ignorant, vain and incompetent, than the majority of the present House of Representatives. The whole session has been a disgraceful squabble for power, and a display of unworthy passions."[37] "The conduct of Congress is a political phenomenon," wrote Wolcott, "over which I would if possible draw a veil; but it cannot be concealed that there has been no system, no concert, no pride, and no industry."[38] Ames in his uncomplimentary manner wrote with reference to the same subject: "Much is not done or attempted, and I perceive (inter nos) the temper and objects of the members are marked with want of due reflection and concert, and indicate the proneness to anarchy, and the self-sufficient imbecility of all popular bodies. . . ."[39] Then to the former

[36] Gibbs, *Fed. Adm.*, I, 304, 321.

[37] *Ibid.*, I, 327; *cf.* Adams, *Letters to His Wife*, II, 220: "A few outlandish men in the House have taken the lead, and Madison, Giles and Baldwin are humble followers."

[38] Gibbs, *Fed. Adm.*, I, 443.

[39] Ames, *Works*, I, 212.

Federalist chieftain he wrote: "But the apathy and inefficiency of our body is no secret to you. We are generally in a flat calm, and when we are not we are near sinking in a tempest. When a sovereign convention engrosses the whole power, it will do nothing or some violence that is worse. . . . "[40] To another Federalist he sent the following: "It is no easy matter to combine the anarchical opinions, even of the good men, in a popular body. We are a mere militia. There is no leader, no *point de ralliément.* The motion-makers start up with projects of ill-considered taxes, and by presenting many and improper subjects, the alarm to popular feelings is rashly augmented."[41]

When the fifth Congress was called together in extra session in 1797, it was evident that the Republicans had practically lost their hold on the House. Jefferson, who knew whereof he wrote, reported that: "The non-attendance of 5. or 6. of that description, has left the majority very equivocal indeed. A few individuals of no fixed system at all, governed by the panic or prowess of the moment, flap as the breeze blows against the republican or the aristocratic bodies, and give to the one or the other a preponderance wholly accidental."[42]

From then on until the election of 1800 the Federalists retained control of the government, and during this interval, the period of the Alien and Sedition Acts and the Judiciary Act, the Republicans were forced back into the rôle of the minority.[43]

[40] Hamilton, *Works,* VI, 202.

[41] Ames, *Works,* I, 214.

[42] Jefferson, *Works,* VII, 145.

[43] While they were not very powerful, they were sometimes able to embarrass the majority party. Jefferson records one instance where the Republicans were able to carry their point by means of some rather sharp parliamentary practice. In 1798 some peace resolutions were introduced into the House. He wrote that they were offered "in committee, to prevent their being suppressed by the previous question, & in the commee on the state of the Union, to put it out of their power, by the rising of the

Upon their return to power the Federalists at first made no attempt to restore the former connection between the House and the Treasury department, or to break down the committee system which the Republicans had established. Even the committee of ways and means was allowed to remain, although it was a constant reminder of the four-year eclipse of the Federalists. That policy of non-interference with Republican institutions may have been conditioned by Gallatin's influence in the House, which was still strong enough to draw a complaint from Wolcott.[44]

In 1800, however, by a vote of 43 to 39, the House reëstablished the Federalist system. On May 9 a bill was passed, authorizing the Secretary of the Treasury to lay before Congress at the beginning of every session a report on the subject of finance, "together with such plans for improving the revenue as may occur to him."[45] In good Republican fashion Gallatin and Nicholas opposed the measure on constitutional grounds. Since all money bills must originate in the House, the secretary had no right even to "propose anything that should originate any money bill." After their defeat on that measure, the Republicans did little until after the election of Jefferson, when they had everything their own way.

The striking feature of this period is the poor showing

commee & not sitting again, to get rid of them." These resolutions, the "result of the united wisdom and deliberation of the opposition party," and the method of handling them show that the Jeffersonians were by no means powerless at the time. *Annals,* 5 Cong. 2, March 27, 1798; Jefferson, *Works,* VII, 224; *Columbian Centinel,* April 4, 1798.

[44] Wolcott wrote that while the revenue did not fall off as he had feared it would, nevertheless "the management of the Treasury becomes more and more difficult. The Legislature will not pass laws in gross. Their appropriations are minute. Gallatin, to whom they yield, is evidently intending to break down this department, by charging it with an impracticable detail." Hamilton, *Works,* VI, 279.

[45] *Annals,* 6 Cong. 1, 709.

of the Republicans. According to their theories, the House of Representatives ought to have been the most important factor in the government, but as a matter of actual record, it was nothing but a drag on the administration. This unfortunate inability to act might at first sight seem to have been the ordinary deadlock which comes when president and Congress are of different parties. A closer examination, however, shows that the Republicans gave evidence of no ability even in the field of opposition. They were so situated that they might have embarrassed the administration by sending up bills to be signed, as Congress is wont to do when it does not agree with the president, but they were in no condition to do that. The real cause of their trouble was lack of unity in their own ranks. The Republicans were permeated with that intense individualism or spirit of separatism which made real coöperation impossible.

Some of the Republican leaders were gradually learning that their theories of government, good as they were, counted for little without the very necessary capacity for constructive action. Those traitors to democracy, the Federalists, had found the secret of success in a well-organized party. Could the champions of popular rights discover methods equally effective, and at the same time consistent with their loudly proclaimed principles? Or would they depart from the paths of political rectitude, from the worship of the spirit of democracy, and follow after the strange gods of the Federalists, because those gods guaranteed results?

CHAPTER X

THE JEFFERSONIAN RÉGIME

When Jefferson was inaugurated in 1801, he might well have observed that a president's worst foes are those of his own political household. Had he not been an incorrigible optimist he would have been discouraged at the very start. During the four years when they controlled Congress his followers had conducted themselves in such a manner as to inspire neither pride in the past nor confidence in the future. His stiff-necked associates had not been able even to make good political capital out of their control of the House. Whether or not the Republicans could be made to act together long enough to put through the Jeffersonian reforms was an open question.

If deliberate expression of principle counted for anything the new president could be trusted to observe the constitutional barriers which separated him from Congress. There would be no extra-legal interference of the Hamiltonian style when he was in charge. After his election to the vice-presidency in 1797 he explained how executive officials ought to conduct themselves. "As to duty," he wrote, "the constitution will allow me only as a member of a legislative body; and it's principle is, that of a separation of legislative, executive & judiciary functions, except in cases specified. If this principle be not expressed in direct terms, yet it is clearly the spirit of the constitution, & it ought to be so commented & acted on by every friend of true government."[1]

Some of the Federalists, however, were not sure that

[1] Jefferson, *Works*, VII, 108.

Jefferson would obey his own dictum. John Marshall, for instance, prophesied that there would be a very intimate relationship between the incoming president and his party following in Congress. "Mr. Jefferson," he wrote, "appears to me to be a man who will embody himself with the House of Representatives. By weakening the office of President, he will increase his personal power. He will diminish his responsibility, sap the fundamental principles of the government, and become the leader of that party which is about to constitute the majority of the legislature."[2]

Certainly in 1797, and perhaps in 1801, Jefferson would have indignantly repudiated those principles which, as Marshall foretold, later became the very foundation of his administration. As a philosopher and speculative statesman, before experience had compelled him to discard certain cherished ideas, he could profess belief in the constitutional doctrine of legislative independence. As the head of the government, and the leader of a badly organized group of politicians, however, he had to ignore his own interpretation of the constitution. The atmosphere of practical politics is not conducive to the long-continued existence of pure theory.

It is not necessary to go far in order to discover why Jefferson's philosophy of government could not be translated into actual practice. In the first place the fundamental conceptions of his party-following made harmony of action almost impossible. The Republicans were the individualists of the day, men who looked askance at any attempt to control their opinions or their actions. Had they not reviled the Federalists for their base subserviency to Alexander Hamilton?

This suspicious attitude toward able leadership was made chronic by the rôle forced upon the party during

[2] Hamilton, *Works*, VI, 501-503.

much of the Federalist period. Originally the Republicans had been the party of opposition and protest. At that time habits had been formed which could not be easily shaken off when the party was placed in full control of the government. Even when the Republicans controlled the House from 1793 to 1797, their organization had been far from effective, and they really accomplished nothing in the way of constructive work. Jefferson's inauguration in 1801 did not bring about any miraculous transformation in the habits of his party, nor did it make his recalcitrant followers one whit more docile. As president his position was far from enviable. During both terms relations between the United States and the belligerent powers of Europe were always in a critical condition. Whatever policies he adopted were practically sure to meet with the unconditional condemnation of the Federalists, to whom nothing that Jefferson ever did or could do seemed good. To make matters worse, he was constantly worried and harassed by want of harmony and by factional controversies within the ranks of the Republicans themselves. Members of his party found it very difficult to agree with each other or with their chief.

A clear appreciation of this state of unstable equilibrium is essential to any understanding of the history of Congress, and of its relation to the president during this period. Under normal conditions there probably would have been no such striking discrepancy between Jefferson's constitutional philosophy and his conduct as president. The difficulties in which he found himself involved as leader of his party furnish the key to the Jeffersonian system.

After the transfer of Gallatin to the Treasury department the unenviable task of guiding the administration party in the House fell to William B. Giles of Virginia.

He was not without ability as a leader, and while he was in attendance friction within the ranks was visibly reduced. Unfortunately for the Republican organization in Congress, he had political aspirations in his own state which prevented him from spending all his time in Washington. The *Washington Federalist,* not an unprejudiced authority to be sure, but trustworthy when supported by evidence from other sources, had much to say concerning the difficulties encountered by the new rulers in handling their own party associates. "In the House of representatives M. Giles leads the ministerial phalanx, and is the only member of it whose capacity is adequate to the conducting measures of the party. Mr. Randolph attempted to lead, but failed; . . . Mr. Giles went home some time ago, and in his absence *many* of his subalterns claimed the command; the consequence was they split and divided among themselves daily. On the return of Mr. Giles a grand caucus was held in the assembly room here, he amalgamated the party; they agreed there should for some days be a dumb legislation; that they would act but not debate. This strong proof of subordination was not refused to Mr. Giles, and nothing was said for two days by the ministerial party." The real purpose of this manœuvre, the account continued, "was to muzzle some of their party who had become troublesome."[3]

More than a month later the same paper contained the following: "It is believed that unless the speaker should add more federalists to the committees appointed to transact the business of Congress that they will not be able to adjourn or complete the necessary business between this and the last of October. The Chancellor of the Exchequer (Mr. R) has been found altogether inade-

[3] *Wash. Fed.,* February 17, 1802. *Annals,* 7 Cong. 1, 666; Giles is referred to here as "the *premier,* or *prime minister* of the day . . ."

quate to the discharge of his financial functions, the bill he introduced repealing the internal taxes was found to be so defective as to require an amendment of twice the length of the original bill. The chancellor's knowledge of parliamentary proceedings is not less defective, than his skill in fiscal concerns; . . . Farmer Giles has now arrived, and will no doubt speedily resume the command."[4] In a letter to the editor, in which he discussed the Republican difficulties, one Federalist wrote that "The ministerialists here are in a most distressed situation. Mr. Giles and Mr. Mason have both gone home, each it is said with the patriotic intention of becoming governor of Virginia.—Unless they speedily return, it is believed that the President's sect in the House of Representatives will be obliged to relinquish the goodly work of reform for want of sufficient acquaintance with business to mature their plans and to carry them into execution."[5]

Jefferson himself was by no means blind to the shortcomings of the legislature. "Congress is not yet engaged in business of any note. We want men of business among them. I really wish you were here. I am convinced it is in the power of any man who understands business, and who will undertake to keep a file of the business before Congress and press it as he would his own docket in a court, to shorten the sessions a month one year with another and to save in that way 30,000 D. a year. An ill-judged modesty prevents those from undertaking it who are equal to it."[6] An interesting letter from Randolph to Gallatin tells the same story. "By the way, I think you wise men at the seat of government have much to answer for in respect to the temper prevailing around you. By their fruit shall ye know them. Is there some-

[4] *Wash. Fed.*, March 25, 1802.
[5] *Ibid.*, March 27, 1802.
[6] Jefferson, *Writings*, VIII, 187.

thing more of system yet introduced among you? or are you still in chaos, without form and void?"[7]

Jefferson frequently reverted to the subject. With reference to the Louisiana purchase, he wrote De Witt Clinton that there was more difference of opinion in Congress than he had expected, and that "our leading friends are not yet sufficiently aware of the necessity of accomodation & mutual sacrifice of opinion for conducting a numerous assembly, where the opposition too is drilled to act in phalanx on every question."[8] In another letter to Rodney he expressed regret at his proposed retirement. "I had looked to you as one of those calculated to give cohesion to our rope of sand. You now see the composition of our public bodies, and how essential system and plan are for conducting our affairs wisely with so bitter a party in opposition to us. . . . "[9]

In January, 1805, referring to a letter from Gallatin in which he seems to have complained about the same difficulties, Dallas wrote, "It is obvious to me that unless our Administration take decisive measures to discountenance the factious spirit that has appeared, unless some principle of political cohesion can be introduced into our public councils as well as at our elections, and unless men of character and talents can be drawn . . . into the legislative bodies of our government . . . the empire of Republicanism will moulder into anarchy, and the labor and hope of our lives will terminate in disappointment and wretchedness."[10]

In 1806 one of the most famous of Jefferson's floor leaders broke with the administration. If the uncomplimentary remarks of the *Washington Federalist* were deserved in 1802, they were not in 1805, for by that time

[7] Adams, *Gallatin*, p. 317.
[8] Jefferson, *Writings*, VIII, 282-283.
[9] *Ibid.*, 296.
[10] Adams, *Gallatin*, p. 327.

Randolph had become one of the mainstays of the party.[11] Yet the very fact that he was so powerful was an element of weakness in the party itself. While they respected his talents as a general, his associates hated him for his overbearing manner and his caustic tongue. Yet men followed him and "voted as was right," as Jefferson naïvely put it, as long as he supported the administration.[12] But Randolph was by nature a man of the opposition, so that when his own party was in the ascendant he was driven to take the other side. In 1820 Randolph himself analyzed his own eccentric character for the benefit of his colleagues in Congress, and the abstract of his remarks is well worth quoting. He had served in Congress almost twenty years, he said, "nearly fourteen of which—just double the time . . . that Jacob served for Rachel, had been spent in opposition to what is called government," for he "commenced his political apprenticeship in the ranks of opposition; . . . and could he add fourteen more to them, he supposed some political Laban would double his servitude, and condemn him to toil in the barren field of opposition: for he despaired of seeing any man elected president whose conduct he should entirely approve—he should never be in favor at court, as he had, somehow, as great an alacrity at getting into a minority as honest Jack Falstaff had at sinking. It was, perhaps, the place he was best fitted for . . . as he had not strength to encounter the details and drudgery of business; habit had rendered it familiar to him; and after all, it was not without its sweets as well as its bitters since it involved the glorious privilege of finding fault—one very dear to the depraved

11 Adams, *Gallatin*, p. 363, Gallatin to his wife: "Varnum has, much against my wishes, removed Randolph from the Ways and Means and appointed Campbell, of Tennessee. It was improper as related to the public business, and will give me additional labor."

12 Jefferson, *Writings*, VIII, 447-450.

condition of poor human nature.'"[13] It seems strange that Jefferson should have trusted such a leader, who could be depended upon for nothing except perhaps to fly off on some tangent at a very inopportune time. There is evidence that as early as 1804 he was discontented with his position. He wrote Gallatin, partly in jest perhaps, that he had been "pestered" with inquiries about public affairs. He found it impossible to answer them, and he expressed considerable satisfaction when he learned that the "Chancellor of the Exchequer and First Lord of the Treasury" was equally unable. Then the letter continued: "In short, I like originality too well to be a second-hand politician when I can help it. It is enough to live upon the broken victuals and be tricked out in the cast-off finery of you first-rate statesmen all the winter.[14]

The immediate occasion of his fall from grace was a combination of the Yazoo land business and Jefferson's attempt to force through an appropriation for the purchase of Florida.[15] In the Florida affair Randolph as chairman of the committee of ways and means was expected to move the appropriation of the necessary two million dollars for the purchase. He refused to act, and finally the government measures were carried in spite of the refractory chairman. This attempt to deprive him of his position as House leader so exasperated Randolph that, greatly to the delight of the Federalists, he turned his fiery denunciations against his former friends.[16]

The fact that his defection did not disrupt the party speaks well for the political skill of the president and

[13] *Annals,* 16 Cong. 1, 1465.

[14] Adams, *Gallatin,* p. 324.

[15] For a full account of these matters see Adams, *Gallatin,* pp. 328-329, 336-339.

[16] J. Q. Adams, *Memoirs,* I, 418.

his Secretary of the Treasury. Jefferson took pains to assure his friends that Randolph's action really left the party stronger than it had been before.[17]

A year after this episode Jefferson found it necessary to procure a new leader for the House. In February, 1807, he wrote to Wilson Cary Nicholas: "Mr. T. M. Randolph is, I believe, determined to retire from Congress, and it is strongly his wish, & that of all here, that you should take his place. Never did the calls of patriotism more loudly assail you than at this moment. After excepting the federalists, who will be 27., and the little band of schismatics, who will be 3. or 4. (all tongue), the residue or the H of R is as well disposed a body of men as I ever saw collected. But there is no one whose talents & standing, taken together, have weight enough to give him the lead. The consequence is, that there is no one who will undertake to do the public business, and it remains undone. Were you here, the whole would rally round you in an instant, and willingly co-operate in whatever is for the public good. Nor would it require you to undertake the drudgery in the House. There are enough, able & willing to do that. A rallying point is all that is wanting. Let me beseech you then to offer yourself. You never will have it so much in your power again to render such eminent service."[18] This letter hardly harmonizes with the president's earlier views regarding the relation between executive and legislature.

The material quoted above explains why Jefferson, the great champion of democracy, has the reputation of being an autocrat in his dealings with Congress. All his work was done amidst forces of disruption that constantly threatened his plans with failure. Under such conditions he was confronted with the bitter choice of permitting

[17] Jefferson, *Writings*, VIII, 428, 434, 441, 447-450.
[18] *Ibid.*, IX, 32.

internal weaknesses to wreck his party, or of throwing away his theories and taking full charge of the management of the legislature. No good politician could consider the first alternative, and Jefferson was nothing if not a good politician. Naturally he chose the second. He and Gallatin had guided the party before 1801, and Hamilton's success showed conclusively that Congress could if necessary be led from outside.

And yet, just as surely as executive officials undertook to manage legislation, there would be immediate and forceful protests. The dilemma was clearly perceived by Jefferson. "Our situation is difficult;" he wrote to William Duane in 1806, "& whatever we do is liable to the criticisms of those who wish to represent it awry. If we recommend measures in a public message, it may be said that members are not sent here to obey the mandates of the President, or to register the edicts of a sovereign. If we express opinions in conversation, we have then our Charles Jenkinsons, & back-door counsellors. If we say nothing, 'we have no opinions, no plans, no cabinet.' In truth it is the fable of the old man, his son & ass, over again."[19]

The president had learned, if his followers had not, that the Republicans had made a mistake in criticising so vigorously the Federalist organization constructed by Hamilton. It took very little experience as head of the administration to convince the more clear-headed Republicans that their opponents had hit upon the only practical plan of actual government. The constitutional separation of executive and legislature would not work in everyday practice, and the very logic of facts drove the Jeffersonians into the paths blazed by their "aristocratic" opponents.

The comprehensive scope of Jefferson's activity as

[19] Jefferson, *Writings*, VIII, 431-433.

president was well described by the two senators from Massachusetts. John Quincy Adams wrote concerning the proposed Florida purchase: "The measure has been very reluctantly adopted by the President's friends, on his private wishes signified to them, in strong contradiction to the tenor of all his public messages. His whole system of administration seems founded upon this principle of carrying through the legislature measures by his personal or official influence. There is a certain proportion of the members in both Houses who on every occasion of emergency have no other enquiry but what is the President's wish. These, of course, always vote accordingly. Another part adhere to him in their votes, though strongly disapproving the measures for which they vote. A third float in uncertainty; now supporting one side of a question and now supporting the other, and eventually slinking away from the record of their votes. A fourth have the spirit even to vote against the will of their leader. . . . This is, however, one of those temporizing experients the success of which is very doubtful. If a really trying time should ever befall this administration, it would very soon be deserted by all its troops, and by most of its principal agents. Even now they totter at every blast."[20] Senator Pickering wrote in the same way at about the same time. He reported that Jefferson tried "to screen himself from all responsibility, by calling upon Congress for advice and direction. . . . Yet with all this affected modesty and deference, he secretly dictates every measure which is seriously proposed and supported; and there are creatures mean enough to suggest, from time to time, that such is the President's wish!"[21]

These statements, made by men whose testimony is

[20] J. Q. Adams, *Memoirs*, I, 403, February 7, 1806.
[21] Pickering MSS., XXXVIII, 102½c, February 2, 1806.

to be trusted, because it is supported by enough corroborative evidence, hardly harmonize with Jefferson's own theory of government, but they do show that the "Sage of Monticello" was an eminently practical man.

It is evident that both in methods and in effectiveness the Republican legislative machine differed little from that evolved by the severely criticised Federalists. The president and his Secretary of the Treasury were responsible for the main outlines, and in some cases for the details as well, of party measures. Policies were evolved, programs laid before Congress, and bills passed, all under the watchful eye of the chief executive. Jefferson was so successful that he was called a tyrant, but his methods were more like those of the Tudor kings than of the Italian despots. Everything that he did had to be done through Congress. Congress to be sure was usually ready to follow Jefferson's lead, but the compliance of that body was due to nothing else than the constant and never ending vigilance of Jefferson and Gallatin.

In one important particular Jefferson improved upon Federalist legislative methods. Hamilton had his followers in Congress, and there was usually some one leader of prominence in charge of the party forces, but this floor leader was not looked upon as the personal representative of the president himself. He was rather an assistant to the Speaker. From 1801 to 1808 the floor leader was distinctly the lieutenant of the executive. William B. Giles, who was actually referred to as "the premier, or prime minister," Cæsar A. Rodney, John Randolph of Roanoke, and Wilson Cary Nicholas all held that honorable position at one time or another. It was their duty to look after party interests in the House, and in particular to carry out the commands of the president. The status of these men was different from that of the

floor leader of to-day, who is given his position because of long service in the House. They were presidential agents, appointed by the executive, and dismissed at his pleasure. The letters to Rodney and Nicholas, quoted above, show that in at least two cases Jefferson actually urged men to run for Congress in order to act as his lieutenants. When Randolph refused to comply with the president's wishes in the Florida affair, he was reduced to the ranks and Nicholson took charge, until Jefferson could persuade Nicholas to enter Congress.

In view of these facts, it is not surprising that Macon and Varnum, the two Speakers during this period, should have left such indistinct traces in the records of Congress. To be sure they were chosen by their party associates in the House, but they were never given authority over them. Leadership was neither the prerogative of seniority nor a privilege conferred by the House; it was distinctly the gift of the president. It might be added that in just what section of the Constitution he found his sanction for such a practice the prince of strict constructionists never told.

Jefferson made it evident that his interest in Congress did not cease with the appointment of a floor leader. On the contrary conferences with his agents were fully as important as cabinet meetings themselves. Personal work with the leaders was in some cases the only way of securing favorable action on his policies. In 1804, when Congress was at work on the Louisiana government bill, the leaders planned to put the system into operation at the close of the session. Jefferson wanted to make Monroe governor of the territory, but the latter could not return from France in time to begin his work so soon. Jefferson therefore did not want the bill to go into immediate effect, and in "private conversations demonstrated to individuals that that is impossible; that the necessary

officers cannot be mustered there under 6 months.''[22] That was a case where he could not safely trust to his floor leader. Later Jefferson referred to his frequent communications with Randolph and Nicholson as matters of course.[23]

If the *Washington Federalist* is to be trusted, measures that did not receive the sanction of the president met with vigorous opposition in Congress.[24] Jefferson's influence it seems worked both ways.

The passing of the Embargo is usually taken as the crowning instance of Jefferson's power in Congress, although very little has come to light in connection with it which would illustrate his methods of dealing with that body. Pickering to be sure bitterly complained that Jefferson *''is the government,''* but that was his usual complaint anyway. When the Embargo message was laid before the Senate, Pickering wrote that ''it was manifest that the minds of his special agents and of a decided majority were previously prepared.''[25]

Perhaps his proposed plan for the purchase of Florida affords the best example of his success in driving through a favorite policy in spite of the determined hostility of some of his own followers. After making up his mind

[22] Jefferson, *Writings,* VIII, 288.

[23] *Ibid.,* 468-472. Referring to Randolph's philippics against the administration, Jefferson wrote: ''He speaks of secret communications between the executive and members, of backstairs' influence &c, But he never spoke of this while he and Mr. Nicholson enjoyed it almost solely. But when he differed from the executive in a leading measure, & the executive, not submitting to him, expressed it's sentiments to others, (to wit, the purchase of Florida) which he acknoleges they expressed to him, then he roars out upon backstairs influence.'' Of all men in the Republican party Jefferson should have been the last to attempt to remove the mote of inconsistency from Randolph's eye.

[24] *Wash. Fed.,* February 17, 1804. During a debate on a proposal to authorize the building of two small vessels for the navy, Nicholson came out in favor of the measure, but John Randolph argued that ''Congress ought not to adopt the measure, because no intimation of its propriety had been given by the President.''

[25] Pickering MSS. XXXVIII, 121-124.

that troublesome questions in the southeast might be solved by buying the territory, he began his campaign. In the first place, he frightened the country by sending to Congress a veritable war message, stating that American citizens had been subjected to injury in the Spanish possessions. "Some of these injuries," so the message ran, "may perhaps admit a peaceable remedy. Where that is competent it is always the most desirable. But some of them are of a nature to be met by force only, and all of them may lead to it. I can not, therefore, but recommend such preparations as circumstances call for."[26] In a private message, however, he recommended a settlement similar to the Louisiana purchase. "Formal war is not necessary—it is not probable that it will follow;" so ran the second message, "but the protection of our citizens, the spirit and honor of our country require that force should be interposed to a certain degree. . . . But the course to be pursued will require the command of means which it belongs to Congress exclusively to yield or to deny."[27] It was planned to have Congress adopt public resolutions, in harmony with the spirit of the first message, which were drafted by Jefferson himself,[28] after which the necessary appropriation would be made. Randolph, the chairman of the committee of ways and means, refused to act, but under the leadership of Nicholson Congress finally acceded to Jefferson's wishes.[29]

In this connection Pickering asserted that Jefferson originally planned to purchase the territory first, and then trust to Congress to sanction the proceedings. Although the project was discussed at a cabinet meeting,

[26] Richardson, *Messages*, I, 384-385.

[27] *Ibid.*, 390.

[28] Adams, *Gallatin*, p. 337; Gallatin, *Writings*, I, 277, 281.

[29] J. Q. Adams, *Memoirs*, I, 403, "The measure has been very reluctantly adopted by the President's friends, on his private wishes signified to them, in strong contradiction to the tenor of all his public messages."

the Republican leaders did not have the courage to follow the initial impulse.[30]

In some cases Jefferson took charge of drafting bills, which were subsequently laid before Congress. In 1804 the cabinet held a meeting to discuss what action should be taken with reference to the insults to which American vessels were subjected by foreign men-of-war. The conclusions of the cabinet were put in the form of a bill, which the president planned to give to Randolph. Congress, however, had already referred the subject to a select committee, so the bill was sent directly to a member of that committee.[31] Again in December, 1805, Jefferson drafted two bills, one for establishing a naval militia, and the other for classifying the militia.[32] The classification bill was adversely reported on by the committee, but after conversing with individual members Jefferson felt that the bill would pass. "I had rather have that classification established," he wrote, "than any number of regulars which could be voted at this time."[33]

Mr. Henry Adams refers to the government during the eight years of the Jeffersonian régime as a triumvirate, with the president and the Secretaries of State and of the Treasury as the real rulers.[34] This was true as far as the general policy of the government was concerned, but in the actual processes of legislation Madison had no concern. He had never shown great skill as a parliamentarian, either in the House of Burgesses or in the House of Representatives, and his letters are almost de-

[30] Pickering MSS. XIV, 155½-¾, "there was at least a *consultation* (if not a direct proposition from the President) to take the two millions to remit to Paris, and depend on the willingness of Congress, when it should meet, to sanction the act: but they were not quite hardy enough to take this unwarrantable step."

[31] Jefferson, *Works*, VIII, 333-336.

[32] *Ibid.*, 403-412.

[33] *Ibid.*, 415-416.

[34] Adams, *Gallatin*, p. 269.

void of references to procedure, either formal or informal. He was the statesman of the triumvirate, not its Congressional director.

Gallatin on the other hand associated himself with Jefferson in the actual management of important legislative proceedings, and his previous experience in the House enabled him to render valuable service. Just as Francis' hotel had been the rendezvous of the Republican leaders during Adams' administration,[35] so Gallatin's house became the recognized headquarters of the party chieftains in later years. Macon, the Speaker, Randolph, the floor leader, Nicholson, Nicholas, Baldwin, and others almost equally prominent in the councils of the party were constantly there. Adams states that hardly a trace of these conversations was recorded, so there is no evidence to throw light on these most important party gatherings.[36] Gallatin himself wrote that he had been very free in his dealings with prominent members of the legislature, and it is evident that he kept a close watch over all proceedings in Congress.[37] If there was no one in that body ready to look after party interests, Gallatin was able to interfere personally, and in at least two instances he prevented the passing of undesirable bills. He wrote Jefferson that the chairman of a certain committee had reported two bills, one to alter the form of government of Michigan, "on principles so opposed to those of our political institutions that I am at

[35] "South Carolina Federalists," *Am. Hist. Rev.*, XIV, 787, "Jefferson lodges at Francis's hotel with a knot of Jacobins . . ."

[36] Adams, *Gallatin*, p. 302.

[37] *Ibid.*, p. 346, October 13, 1806, Gallatin to Jefferson: "If . . . there be any who believe that in my long and confidential intercourse with Republican members of Congress, that particularly in my free communication of facts and opinions to Mr. Randolph, I have gone beyond what prudence might have suggested, the occasion necessarily required, or my official situation strictly permitted," they would naturally criticise freely.

a loss to guess how it could pass the House without animadversion." The other proposed to give the governor and judges authority to decide all land claims in the territory. "Both passed the House; Nicholson had resigned; Randolph attending to other objects; no man yet considering himself as obliged to watch over every proceeding; in fact, nobody had attended to the business. I found it necessary to interfere by speaking to members of the Senate, and succeeded in having the government bill postponed sine die, and the general principles of the land bill rejected."[38] As was the case with Hamilton, Gallatin must have found that his official duties were not the only matters to which he had to give his attention. The "course of legislative manœuvres" was likewise a matter of concern to Jefferson's Secretary of the Treasury.

As a matter of fact, an outline of Gallatin's work as Secretary of the Treasury and first assistant in Congressional business shows that Hamiltonian precedents were generally followed. In the first place the hitherto unconstitutional practice of reference was revived by the Republicans. On February 21, 1803, a resolution was introduced by a Republican member, to the effect that the Secretary of the Treasury be directed to prepare and submit to Congress early in the next session a plan for laying "new and more specific duties" on imports, so that " the same shall, as near as may be, neither increase nor diminish the present revenue arising to the United States from imports."[39] On March 3, the secretary was directed to prepare and lay before Congress at the next session a digest of laws relating to duties on imports and tonnage, together with recommendations regarding such

[38] Gallatin, *Writings*, I, 322, November 25, 1806. It was in the following February that Jefferson wrote to Nicholas, urging him to take command of Congress.

[39] *Annals*, 7 Cong. 2, 567-568.

changes as might be necessary.[40] The mere fact that their first accession to power had been used primarily for the purpose of breaking up a connection of almost identically the same kind did not weigh heavily on the Republican conscience. Hamilton was secretary in 1794, while Gallatin held the position in 1803. Evidently legislative methods were neither corrupt nor unconstitutional in themselves. It was only their employment by the "aristocrats" that made them dangerous. Moreover the specially appointed guardians of popular rights are of course freed from the rules that bind ordinary men. What matter if the Republicans did take over the whole legislative system of the Federalists, which they had formerly condemned and annihilated? The chosen representatives of the sovereign people could do no wrong.

Moreover the secretary attended committee meetings, after the manner of his predecessor.[41] Then he certainly complained, and evidently protested vigorously when Randolph was removed from the chairmanship of the committee of ways and means.[42] Besides attending committee meetings and attempting to interfere in the choice of chairmen, Gallatin drafted at least one report for the committee of foreign relations, which Campbell, the chairman of the committee, presented to the House.[43] There was no Maclay to record in detail the practices of the Republican secretary, but what evidence there is indicates that in managing the legislature he was just as active and as successful as Hamilton had been before him.

During this period of Republican supremacy the most

[40] *Annals*, 7 Cong. 2, 644.
[41] J. Q. Adams, *Memoirs*, I, 447.
[42] Adams, *Gallatin*, p. 363.
[43] *Ibid.*, p. 378; Gallatin, *Writings*, I, 435-446.

noteworthy institution in Congress was not the standing committee, although its importance was steadily growing, nor yet the speakership, but the extra-constitutional party organization called the caucus. Through the caucus the jarring, discordant elements of the party were reconciled and made to work together, so that concerted policies and harmonious action were no longer the exclusive possessions of the Federalists. Inasmuch as constitutional restrictions did not operate in the realm of party machinery, president, cabinet, and legislature could all come together on equal terms in the stronghold of a secret meeting. The artificial barriers of a written constitution prevented a perfectly frank and open connection between the branches of government, and forced into existence instead an illegitimate union with all its attendant evils. To the politician of course the scheme seemed good, because it made possible the necessary cooperation, while at the same time it effectually concealed individual responsibility.

The device itself, well known in the colonies, had been brought into Congress, as early as 1790, during the period of Hamilton's supremacy. By 1797 the Senate was so familiar with it that committee membership was determined in secret party session.[44] Jefferson is authority for the statement that "during the XYZ Congress, the Federal members held the largest caucus they ever had, . . . and the question was proposed and debated, whether they should declare war against France, and determined in the negative." He also reported that

[44] "South Carolina Federalists," *Am. Hist. Rev.*, XIV, 789, May 29, 1797. The Senate distributed the parts of the President's speech to several committees; "by a previous arrangement, they have left out of the commtees. every one of the minority to shew them that they have no confidence in them and are afraid to trust them at this crisis: there is not a man of the minority on any one committee."

in that caucus only five more votes were needed to bring about a declaration of war.[45]

Perhaps the most noteworthy of all Federalist caucuses were those held in 1801, during the exciting contest for the presidency. Bayard, who assumed the lead after the deadlock became serious, decided to vote for Jefferson instead of Burr. He called a caucus, and informed his colleagues of his determination. After the first outburst of indignation they seemed inclined to "acquiese," and another caucus was arranged for, "merely to agree upon the mode of surrendering."[46] After the election was over Bayard wrote a vivid account of the whole proceeding to Hamilton. "In the origin of the business I had contrived to lay hold of all the doubtful votes in the House, which enabled me, according to views which presented themselves, to protract or terminate the controversy."

"This arrangement was easily made. . . . When the experiment was fully made, and acknowledged upon all hands to have completely ascertained that Burr was resolved not to commit himself,[47] and that nothing remained but to appoint a President by law, or leave the government without one, I came out with the most explicit and determined declaration of voting for Jefferson. You cannot well imagine the clamor and vehement invectives to which I was subjected for some days. We had several caucuses. All acknowledged that nothing but desperate measures remained, which several were disposed to adopt, and but few were willing openly to disapprove. We broke up each time in confusion and

[45] Jefferson, *Anas,* January 10, 13, 1800. These reports came to Jefferson in rather roundabout fashion.

[46] Bayard Papers, A. H. A. *Report,* 1913, II, 127.

[47] In a letter written during the controversy itself, Bayard wrote that Burr "was determined to come in as a Democrat. . . ." Bayard Papers, 126.

discord, and the manner of the last ballot was arranged but a few minutes before the ballot was given. Our former harmony, however, has since been restored."[48]

Maclay had been inclined to speak critically of this device of the Federalists, but once in power the Republicans unblushingly adopted it along with whatever else in the Federalist system seemed worth taking. Just how early the Republicans began to follow Federalist precedent in this respect is not known definitely. Mr. Henry Adams states that during the six years of Gallatin's career in Congress there were only two "meetings of his party associates in Congress called to deliberate on their political action." These two occasions were in 1796, during the debate on the Jay Treaty, and in 1798, during the discussion of the attitude of the French Directory.[49] This would indicate that the caucus was not regularly used by the Jeffersonians. The party, however, was more familiar with that bit of legislative machinery than Mr. Adams' statement implies, and there were certainly other Republican caucuses during that period. As a matter of fact the leaders of the party lived at the same hotel, so they might he said to have been in informal

[48] Hamilton, *Works,* VI, 523.

This custom of settling important questions in caucus was continued by the Federalists after the election of 1800. Regarding the repeal of the Judiciary Act, Bayard wrote Hamilton that there would be a meeting "to concert an uniform plan of acting or acquiescing before Congress adjourns. . . ." *Ibid.,* 539. See also Gibbs, *Fed. Adm.,* I, 331, Goodrich wrote that the Federalists had decided to "risque the consequences of delay, and prolong the debates," in the hope that some pressure might be brought to bear on the representatives by their constituents.

[49] Adams, *Gallatin,* p. 214. Caucuses were held on those occasions. Goodrich hints at united action on the part of the opposition at that time, and implies that Republican action was the outcome of preconcert. Gibbs, *Fed. Adm.,* I, 331, 335. With reference to the threatened war with France, Jefferson reports the device adopted by the Republicans to get their resolutions before the House. The resolutions were referred to by a Federalist paper as the "result of the united wisdom and deliberation of the opposition party." Jefferson, *Writings,* VII, 224; *Col. Cent.,* April 4, 1798.

caucus most of the time.[50] It was reported in 1796 that the Republicans held a caucus to decide on a candidate for the vice-presidency.[51] In 1799 the *Columbian Centinel* printed the following: "Among the extraordinaries of the day, may be ranked the *caucussing* of the Jacobins at *Philadelphia,* in favor of Mr. Rutledge, of South-Carolina, as Speaker, in opposition to Mr. Sedgwick, *because* the latter is a *northern man.*"[52] Then, while the Federalists were holding their caucuses during the election of 1800, their opponents were busy in the same way.[53]

The Republicans certainly became familiar with the caucus before the election of 1800, and from the seventh Congress on they made regular use of it. The Federalist newspapers of 1802 were constantly referring to Republican caucuses. "The Democrats in Congress," ran an item in the *Washington Federalist,* "are adopting of late quite an economical plan of making laws.—All business is to be settled in *caucuses* before it comes before the House; and the arguments or motives be given in *newspapers* afterwards. The federal members are to be treated as nullities."[54] The same paper charged that the decision regarding important bills was not made in the House, but in the caucus.[55] Bayard, a Federalist, speaking during the debate on the repeal of the act establishing the district courts, referred to the caucus, and was called to order for so doing. That was in 1802, and was

50 "South Carolina Federalists," *Am. Hist. Rev.,* XIV, 787.

51 *Ibid.,* 780.

52 *Col. Cent.,* December 7, 1799.

53 *Wash. Fed.,* February 10, 1801; "It is said a *Jeffersonian Caucus* met last Friday evening. For special reasons, the meeting was not held in Washington but in Georgetown.—The Democratic Representatives in Congress, with their Genevan Director and his Subalterns, were generally present."

54 *Ibid.,* February 6, 1802.

55 *Ibid.,* January 28, 1802.

apparently the first mention of the institution in the House.[56] It was charged that at these meetings either Jefferson or Duane always presided.[57]

The following breezy account is a good example of Federalist comment on Republican affairs. "At a caucus held in the dancing assembly room, back of Stiles' boarding house, New Jersey Avenue, on the night following the 20th of January, in the year of grace 1802, but the 1st of pure democracy.

Johnny Randolph *in the chair.*

Mr. Elmendolph moved that there be a Secretary, and nominated himself for the appointment." "Chairman. Gentlemen, fellow servants of the people, our last caucus, in which was determined the bill, for the diminution of the army, was advanced to this night, to decide on the bill for a naval armament against Tripoli; and the question is, shall it pass without amendments—and without debate too, said Mr. Davis of Kentucky, with a sneer, and putting on his hat, withdrew. This roused Mr. Claiborne, who, flourishing his hand, holding his hat and stick, said, Mr. Chairman, I am sorry that we agreed in our last caucus to pass the Military bill, without saying anything against it; citizen Davis is very angry, and I myself think it will never do; we ought to be allowed to make speeches against expense, all kinds of expense, no matter how we vote, let our speeches be printed, and we can tell our constituents the federalists carried the vote . . . and I understood we had agreed so, for most of our side, talk one side and vote t'other . . . here the caucus was interrupted by the entrance of the attorney general, who declared . . . that their great coats should suspend themselves before the windows, to prevent the prying eyes of aristocracy from telling who were assembled; this was

[56] *Annals*, 7 Cong. 1, 480.
[57] *Wash. Fed.*, February 21, 1802.

immediately done, but one window remaining unveiled, after all the great coats were applied; John Smith of New York proposed, that Col. Varnum should stand with his face to that, which, from its broad shape and sable hue, he believed would interrupt vision as well as a great coat; but to avoid accident, he moved that Mr. Jones of Philadelphia and Dr. Archer of Maryland should back him."[58]

Perhaps the best description of the caucus as the real legislature is that in the speech of Josiah Quincy, the radical Federalist from Massachusetts. "But, sir," he said in speaking of the bill for the extra session of Congress, "with respect to this House, I confess I know not how to express my opinion. To my mind, it is a political non-descript. It acts, and reasons, and votes, and performs all the operations of an animated being, and yet, judging from my own perceptions, I cannot refrain from concluding that all great political questions are settled somewhere else than on this floor." The Speaker called him to order, and Quincy went on: "If the Speaker means that I have not a right to state facts, and leave the people to make reflections upon them, I must appeal from his decision." Quincy then proceeded to state facts which proved his assertion. "The fact to which I allude happened on the day when the enforcing embargo law was passed. On that day, before the House was called into a Committee of the Whole upon the bill, I was informed that it had been resolved somewhere, I know not where, nor by whom, that the House should be called into Committee of the Whole immediately upon that bill—that it was to be passed in one day through all the remaining stages—that the bill was then actually engrossed, or engrossing, and that after it was so passed, a bill was to be proposed and passed for calling an extraordinary ses-

[58] *Wash. Fed.*, January 23, 1802.

sion of Congress in May next. This was stated to me, previous to the going into Committee of the Whole on the enforcing embargo bill, as the course settled. Well—what happened? Why, agreeably to the information I had received, we were immediately called into a Committee of the Whole, on the bill. We did pass it, through all the remaining stages at one session, notwithstanding the multitude of its provisions, the greatness of the principle and consequences it involved. So far my previous information proved correct. It will also be recollected that in the course of the nocturnal session on that bill, the gentleman from Pennsylvania (Mr. Smilie) did state it as his intention to bring forward a bill for a meeting of Congress in May, and accordingly, the next day he introduced the motion, which was the foundation of the present bill. Thus again my previous information was proved by the event accurate."[59]

Several Republicans spoke in reply, not to contradict, because contradiction of known facts is somewhat difficult, but to explain why they transacted business in that way. One Williams, for instance, argued that the tactics of the Federalists forced such a course upon the majority. "Gentlemen in the minority all went to dinner, leaving one gentleman behind them to call for the yeas and nays and make motions till they came back. . . . When that course of proceeding was adopted, there was a kind of instantaneous determination of the majority of the House to take the question."[60] Instantaneous determinations must have come frequently, and they struck the majority with a most curious uniformity.

Some of the Federalists, such as Quincy and Pickering, were extremely bitter in their denunciation of this method, first introduced by their friends, and then used

[59] *Annals*, 10 Cong. 2, 1143.
[60] *Ibid.*, 1147.

so effectively by their opponents. Pickering was so wrought up that he advocated secession. "And must we, with folded hands, wait the result? or timely think of other protection? This is a delicate subject. The principles of our revolution point to the remedy—a separation. That this can be accomplished, and without spilling one drop of blood, I have little doubt. One thing I know, that the rapid progress of innovation, of corruption, force the idea upon many a reflecting mind. *Indeed* we are not uneasy because 'unplaced': But we look with dread on the ultimate issue; an issue not remote, unless some new and extraordinary obstacle be opposed, and that speedily. For paper constitutions are become as clay in the hands of the potter. The people of the East cannot reconcile their habits, views, and interests with those of the South and West. The latter are beginning to rule with a rod of iron. When not convenient to violate the Constitution, it must be altered; and it will be made to assume any shape as an instrument to crush the federalists."[61]

If more democracy was injected into American government by Jefferson and his followers, that fact could never be deduced from the records of Congress. The House of Representatives was just as much dependent upon the executive as it had been at the height of Hamilton's career. On the other hand there is evidence of development in the opposite direction. In his eminently successful attempt to overcome friction within Republican ranks, Jefferson had really built up a highly centralized system. The party following was drilled to act together in caucus, where the individual member was induced to relinquish his cherished privilege of blocking the wheels of action. But the caucus was only the rehearsal, so to

[61] Pickering MSS. XIV, 93, January 29, 1804; *cf. ibid.*, 106, and J. Q. Adams, *Memoirs*, I, 465.

speak, and there was always the possibility that in the regular performance in Congress some unruly Republican might cast off party trammels and vote as he pleased. To guard against such a contingency Jefferson made it a practice to keep a recognized leader in the House, whose duty it was to see that members "voted as was right." The infallibility of Jefferson in the political field was like unto that of the pope in the spiritual, and denial of his inspiration was heresy, punishable by political death. Good Republicans such as John Randolph, for instance, who insisted upon the right of independent judgment, were promptly read out of the party. It seemed a far cry to democracy when the President insisted upon doing the thinking for Congress and regulating the actions of its members.

During all of his first term and for a greater part of his second Jefferson succeeded in dominating the party which he had helped to create. Caucus and Congressional floor leader looked to him for advice and direction. But the development of this very machinery made possible a radical change in the relationship between executive and legislature. There was nothing to prevent some of the influential members of the House from getting control of the party, and through it of the whole administration. The House might at any time place one of its real leaders in the Speaker's chair, and clothe him with all the power formerly enjoyed by Jefferson's floor leaders. When the party organization became powerful enough to elect the president, as it practically did in 1808, the end of executive control was already in sight. Jefferson brought order out of the chaos in his party through an effective organization, but in so doing he lost sight of the Republican ideal of the earlier period. According to those original principles, the House of Representatives should have been the most important

factor in the government. By getting control of that very party organization which threatened permanently to eclipse such theories, Congressional leaders were able to transfer the attributes of sovereignty from the president to the House of Representatives. Madison's presidency was the transitional period during which this readjustment of the relations between the two branches of the government was actually brought about.

CHAPTER XI

MADISON AND CONGRESS

By his masterly success in overcoming factional differences, Jefferson proved to the country that as a political leader he was almost without a rival. Few presidents have had a more disjointed, refractory party to deal with, and none has a higher reputation for cleverness in management. For almost eight years he held his forces together, and, displaying sometimes a stubborn firmness, again a conciliatory spirit amounting almost to weakness, he forced the adoption of the program of the administration.

Madison succeeded to Jefferson's office but not to his ability. Theoretically he was the party chieftain, but in that position he displayed lack of power and want of political wisdom as unpleasantly pronounced and conspicuous as it was pathetic. Some of his difficulties were due to his own temperament and personality, for he was never meant to be a leader of men. But he was in large measure the victim of circumstances. Jefferson had made the Republican party, and as maker he ruled it. The party in its turn made Madison president, and what need was there to bow before the idol it created?[1]

Madison's real troubles began even before his inauguration. Worn out and discouraged because of growing opposition, Jefferson laid down the burdens of office in the winter of 1809. Early in January, the House broke

[1] Madison's troubles as a machine-made president are discussed at length in a letter from Pickering to Cabot, March 19, 1810; Pickering MSS. XIV, 279.

away from executive control, and assumed for itself the responsibility of deciding upon the wisdom of various measures. For one thing, in spite of Gallatin's heated objections, it passed a bill to fit out the navy.[2] Less than a month afterwards Congress struck another vigorous blow at the administration by repealing Jefferson's favorite measure, the Embargo, and with that the firmly knit and intimate connection between executive and legislature came to an abrupt end. Even in the caucus, where the repeal was really carried, the Congressional majority seemed determined to break completely with Republican custom. "The Caucus at Washington, on Monday evening," ran one account, "was rather a public than a private meeting. The doors were not closed. Several moderate republicans, and one federalist, attended. Mr. Giles made an able speech, in a style compassionate and conciliatory towards the eastern People. Messrs. Eppes and J. G. Jackson abandoned the War System. It was decided by 61 votes to 2 to REPEAL THE EMBARGO on the 4th of March next. Messrs. Bassett and Taylor were the dissentients. It was decided not to issue Letters of Marque. The question of an *Armed Commerce* was fairly left open for decision in the House. The Volunteer Army Bill was given up. A NON-INTERCOURSE LAW is to be passed, to take effect at a distant day, if another effort for Peace shall fail. An ARMY of Sixteen Thousand Men is to be raised, and the Executive is to be authorized to borrow TEN MILLIONS OF DOLLARS."[3]

The strength of the opposition was again emphasized by the action of the Senate in the case of the non-intercourse act. Senator Pickering had planned to speak against it, but he was refused permission. He wrote that

[2] Adams, *Gallatin*, pp. 385-387.

[3] Spooner's *Vermont Journal*, no. 1335, February 20, 1809, quoting from the *Freeman's Journal* of February 10.

"the Admn men, duly prepared in caucus were ready to adopt it *without discussion.* I asked for an explanation of the material parts of the bill and their necessary operation: but this was denied us. And when I desired a postponement only till the next day; and tho' it was then past four o'clock, this request was refused, and the bill passed."[4] Although he attributed this measure to the "administration," Pickering was clearly in error. The measure was decided upon in an anti-administration caucus, and all the other evidence shows that by this time the insurgents had full control. The Federalists did not realize that an important change was going on in the government itself. Hitherto the initiative had been imparted by the president and his friends, but from this time on until the "reign" of Andrew Jackson the guiding power is to be found in other quarters.

For the time being the reins were seized by a small group in the Senate, the commands of which, even in matters relating to his own cabinet, Madison was unceremoniously compelled to obey. The president desired to transfer Gallatin to the State department, but he was forced to forego that plan, and to appoint instead a worthless nonentity in the person of one Robert Smith. The leaders of this hostile group were General Smith, brother of the new Secretary of State, and Wilson Cary Nicholas, their brother-in-law. In the face of the attacks of this new triumvirate the administration succumbed, and Madison could hardly have played a less important part during those eight uncomfortable years if he had remained in Virginia.[5]

Madison's difficulties in the winter of 1809 were only a warning of more troubles to come. While it refused to act in harmony with the administration, the eleventh

[4] Pickering MSS. XIV, 230.

[5] Adams, *Gallatin,* pp. 388-391. Contemporaneous account written by John Quincy Adams.

Congress was so devoid of talent that it could accomplish nothing by itself. The characteristics of its two sessions were unintelligent discussion and lack of positive action, to which the Annals are a lasting and unpleasant memorial. It had no policy, and the members rambled on indefinitely about foreign relations in general and non-intercourse in particular.

To be sure Madison still had Gallatin's assistance, but the latter was *persona non grata* to Congress, so that nothing could be accomplished through him. He drafted the measure known as Macon's Bill number one, the object of which was to exclude both French and British vessels from American ports, but his personal enemies defeated it in the Senate.[6]

After the first session had dragged on for nearly five months, Madison wrote to Jefferson that: "Cong^s^ remain in the unhinged state which has latterly marked their proceedings; with the exception only that a majority in the H. of R. have stuck together so far as to pass a Bill providing for a conditional repeal by either of the Belligts of their Edicts; . . . "[7]

Matters steadily went from bad to worse, and in the second session Congress was able to strike a telling blow at Gallatin. The bill for the recharter of the National Bank was defeated in the Senate by the casting vote of the vice president. Thus in the face of a threatened crisis in foreign relations the Treasury was deprived of the services of a very badly needed financial agent.[8]

The president's position was perfectly obvious to his contemporaries. John Randolph of Roanoke, never happier than when a lively political fracas was in progress, wrote: "The truth seems to be that he (Madison) is President *de jure* only. Who exercises the office *de facto*

[6] Adams, *Gallatin*, pp. 413, 415.
[7] Madison, *Writings*, VIII, 95, April 23, 1810.
[8] Adams, *Gallatin*, pp. 426-429, February 20, 1811.

I know not, but it seems agreed on all hands that 'there is something behind the throne greater than the throne itself' . . . " Then, concerning Gallatin, he continued: "If his principal will not support him by his influence against the cabal *in the ministry itself,* as well as out of it," he ought to resign. "Our Cabinet presents a novel spectacle in the political world; divided against itself, and the most deadly animosities raging between its principal members. . . . " Three days later he thus summarized his observations: "The Administration are now in fact aground at the pitch of high tide, and a spring tide too. Nothing, then, remains but to lighten the ship, which a dead calm has hitherto kept from going to pieces. If the cabal succeed in their present projects, and I see nothing but promptitude and decision that can prevent it, the nation is undone."[9]

Placed in such an intolerable situation, Gallatin could do nothing less than offer his resignation. In a masterly analysis of the difficulties under which he and his chief had labored, he set forth his reasons for wishing to withdraw. In such a government as that of the United States, he wrote, "it appears to me that not only capacity and talents in the Administration, but also a perfect heartfelt cordiality amongst its members, are essentially necessary to command the public confidence and to produce the requisite union of views and action between the several branches of government. In at least one of these points your present Administration is defective. . . . New subdivisions and personal factions, equally hostile to yourself and to the general welfare, daily acquire additional strength. Measures of vital importance have been and are defeated; every operation, even of the most simple and ordinary nature, is prevented or impeded; the em-

[9] Adams, *Gallatin,* pp. 430, 431, Randolph to Nicholson, February 14, 17, 1811.

barrassments of government, great as from foreign causes they already are, are unnecessarily increased; public confidence in the public councils and in the Executive is impaired, and every day seems to increase every one of these evils. Such a state of things cannot last; a radical and speedy remedy has become absolutely necessary. . . . I clearly perceive that my continuing a member of the present Administration is no longer of any public utility, invigorates the opposition against yourself. . . . " Consequently he tendered his resignation.[10] Madison, however, did not wish to part with the ablest Republican in office, and Gallatin held his position until May, 1813, when he welcomed the chance to go abroad as one of the peace commissioners.[11]

The twelfth Congress was the very opposite of its inactive, blundering, leaderless predecessor. In place of those mediocrities who could do nothing better than prevent the enactment of Gallatin's proposals, there appeared that famous group of impulsive, energetic young Americans of the west and south, the "war hawks" of 1812. Clay, the new Speaker, with Calhoun and Lowndes, would give tone to any assembly. Gallatin, who tried at first to direct the new Congress as he had tried to direct the old,[12] failed again, but for a very different reason. With the eleventh Congress he could do nothing, because it was impossible to galvanize a dead mass into life. In

[10] Gallatin, *Writings,* I, 495-496, Gallatin to Madison, March, 1811.

[11] Gallatin did not always agree with Madison. Monroe, in 1820, referred to Gallatin's report concerning the condition of the treasury at the beginning of the War of 1812, the tendency of which was "exceedingly unfavorable to the measures then contemplated by Mr. Madison." J. Q. Adams, *Memoirs,* IV, 500-501.

[12] Pickering MSS. XXX, 17, February 18, 1812. ". . . indeed such has been the confusion and division among the party, that no one has hitherto discovered sufficient influence to control any great or general question: Smilie who is most notoriously a creature of Gallatin the arch Jugler of administration has talked & scolded again & again but in vain." Reed to Pickering.

the twelfth there were able, influential leaders in the House, with a policy of their own. To be sure it took them a little time to get control, but when they did they compelled the administration to follow their lead.

Disgusted with what seemed to them the unpatriotic yielding to European belligerents, these militant nationalists determined to take their stand on a policy of aggressive action. In former years, the president had been able to direct the foreign policy of the government, and as party leader he could force the House to sanction his proposed measures. In 1812, instead of determining what course should be followed, Madison, a notorious pacifist, found it expedient or necessary to acquiesce in the war policy of the majority in Congress. On May 11, Taggart wrote Pickering that there was no doubt of the determination of the leaders to declare war, and that nothing would deter them except inability to make it. A "mere passive war," he reported, might meet with the approval of Jefferson and Madison, but "it will not meet with the views of the committee of foreign relations and others to whose implicit direction Madison has resigned up himself, because, as I believe, he could in no other way secure their support in his reëlection."[13] Madison's consent to war was such a puzzle to his opponents that they tried to find some reasonable explanation for it, and this opinion expressed by Taggart was widely circulated and generally believed by the Federalists. According to report, a committee, including Clay and Grundy, had called on Madison, and threatened to prevent his reëlection if he would not recommend war; rather than lose a second term, the president obeyed. What the real facts of the case are no one knows. It is perfectly clear that if the Congressional caucus had refused to nominate Madison, his chances of reëlection

[13] Pickering MSS. XXX, 41, May 11, 1812.

would have been almost hopeless. Certainly in 1812 the nomination was delayed for some reason. It was not until May 18 that the nominating caucus was held; in 1804 it met on February 24, in 1808 on January 23, and in 1816 on March 12. Foster, the British ambassador at Washington, asserted that the leaders waited until they felt sure of Madison's attitude before they honored him with what was practically the gift of a second term. "The reason why there has been no nomination made in caucus yet, by the Democratic members, of Mr. Madison as candidate for the Presidency is, as I am assured in confidence, because the war party have suspected him not to have been serious in his late hostile measures, and wish previously to ascertain his real sentiments."[14]

The "war hawks" might drag the unwilling Madison along in their war policy, but for several months they had some difficulty in holding their followers together in Congress.[15] Besides the trouble caused by the Smith-Nicholas faction, referred to above, there was other lack of harmony within Republican ranks during the early part of the war. In May, 1813, Webster wrote that "At present, rely upon it, there is great diversity & schism, among the party—how much of this can be remedied, by caucussing and drilling, it is not easy to say." Again, "If we only had three or four more Senators, we should see Madison kick the beam." "Poor Madison!" he wrote a few days later, "I doubt whether he has a night's sleep these three weeks—." Still more specifically, on June 19, he wrote: "The fact is, the Administration are, for

[14] Foster to Castlereagh, May 3, 1812, quoted in Adams, *Hist. of United States,* VI, 213. This is the most direct evidence there is on this interesting point. The matter was referred to in some of Pickering's correspondence, but he gives nothing but hearsay evidence. Pickering MSS. XV, 19, 24, 27.

On January 5, 1813, Josiah Quincy charged in Congress that Madison would not have been reëlected if he had not promised to support the war policy. *Annals,* 12 Cong. 2, 565.

[15] Adams, *Hist. of United States,* VI, 113-219.

the moment, confounded—They are hard pushed in our house—much harder in the Senate— . . . Madison has been several days quite sick . . . the Taxes go heavily—I *fear* they will not go at all—They cannot raise a Caucus, as yet, even to agree what they will do—They are in a sad pickle, who cares?"[16]

Then, with reference to the proposed plan for raising revenue, Hanson said that system as "digested, methodized, altered, and submitted to the House, . . . was the result of a compromise; that a majority could not be carried along to support it, but for the modification embracing these reservations; and that a majority could not have been induced to vote for the taxes, but upon the express condition and expectation that they would never take effect;" Hanson referred to the caucus, held at the Capitol, which resulted in nothing, because there was "much dissention and wrangling," and which finally broke up in confusion.[17]

In January, 1814, Potter of Rhode Island taunted the Republicans with their inability to work together. According to his understanding it was "not only the right, but the duty of the majority to govern—they ought to be true to themselves and just to the nation—to lay down their course and pursue it . . . without turning to the right or left, as on them rests all the responsibility." They control the army and the treasury, "and if they have not ability to devise a system of measures, stability to persevere in, and energy sufficient to execute them, they ought not to find fault with the minority." He asserted that the administration had been impeded by "their own divisions and jealousies, as well in the Cabinet as in the Senate and House of Representatives. . . . if the President of the United States, with his means of

[16] Webster, *Letters*, pp. 35, 39, 42-43 (Van Tyne ed.).
[17] *Annals*, 13 Cong. 1, 461.

information, could not have selected from his political and personal friends four gentlemen having the same general and political interest with himself that could agree with him in his measures," and if the war party in the Senate and House could not coöperate, "how could they expect the minority to agree with them?"[18]

The foregoing statements make it clear that the Republican leaders in Congress were not able immediately to subject their followers to the strict discipline of the Jeffersonian régime. Executive influence had been thrown off, but the House had not yet acquired enough experience in going alone to make a good showing. The Jeffersonian organization was still in existence, but the new managers had not learned how to operate it to the best advantage. According to Webster, all really important business was as usual transacted outside the House. "In our political capacity," he wrote, "we, that is, the House of Representatives, have done little or nothing. The time for us to be put on the stage and moved by the wires, has not yet come. I suppose the 'show' is now in preparation, and at the proper time the farce of legislating will be exhibited. I do not mean to say that the 'projects' will not be opposed, as far as may be, nor is it certain that all the Democrats will 'hang together,' on the great subject of taxes; but before any thing is attempted to be done here, it must be arranged elsewhere."[19]

It was not until 1814 that the Clay contingent obtained such complete control of the administration that this friction practically disappeared. Even Jefferson himself could have done no better in overcoming disintegrating forces within the party. With reference to the restrictions on commerce in force during the war, Webster said that the system had been given extensive support, "be-

[18] *Annals*, 13 Cong. 2, 1101, January 21, 1814.
[19] Webster, *Private Correspondence*, I, 233, June 4, 1813.

cause it was attended with a severe and efficacious discipline, by which those who went astray were to be brought to repentance. No Saint in the Calendar ever had a set of followers less at liberty, or less disposed to indulge troublesome inquiry, than some, at least, of those on whom the system depended for support."[20] A letter to the *Columbian Centinel* brings out the same idea. After reporting that the repeal was not opposed by anyone of importance, the writer continued: "The *Managers of the Nation* held their caucus; where the repeal having been *decreed,* the President, Senate, and House, like the old French Parliament, had nothing to do but to *enregister* and *execute* the edict. So moves our State machine."[21]

In the next session King of Massachusetts delivered a tirade against the Republican system of governmental management. "This consolidation of the different departments of Government, I must observe to you, sir, is one of the high crimes which this Administration had committed against the Constitution and the American people. For party and corrupt purposes you have broken down the barriers interposed by the Constitution, for the safety of the people, between the several departments of power, whereby this Administration, including the majorities in both Houses of Congress, have become one unleavened lump of democracy and oppression. Not content with the Constitution, as you violently tore it from Washington and its other friends; not content with creeping under it, leaping over it, winding round it—now, sword in hand, attempting to pierce through it; you have so altered it, changed it, and mangled it, to suit your party views and purposes—to perpetuate your power and misrule—that the people no longer know or acknowl-

[20] *Annals,* 13 Cong. 2, 1966, April 6, 1814.
[21] *Col. Cent.,* April 20, 1814, letter from Washington, dated April 13.

edge it; no longer find under it protection for their property or safety for their lives.''[22]

One of the striking characteristics of the foregoing quotations is the radical change of tone in the comments on Congress. Before 1813, the burden of the reports from all quarters is the lack of harmony within the ranks of the Republicans themselves. Their weakness was so evident that it furnished the Federalists ample grounds for ridicule. By June, 1813, Webster's correspondence was revealing more respect for the ability of his political opponents, and ten months later he could speak dogmatically of the ''severe and efficacious discipline'' by means of which the Republicans were achieving marked successes.

Concrete evidence of the thoroughness of this inner transformation of Congress can be found in the quality and quantity of the legislative output in 1816 and 1817. After declaring war, the Republicans seemed to have no carefully made plans or policies, and for a time the records exhibit almost nothing except the vacillations of the party in power. After 1817 Congress again became an active, lawmaking body, as it had been before Jefferson's retirement, and by the end of Madison's second term it had three pieces of constructive legislation to its credit: the Second Bank, the tariff of 1816, and the bill for internal improvements.

It is not surprising that the Federalist looked upon this reëstablishment of Republican prestige and power as a restoration of the complete Jeffersonian system. Externally perhaps the Republican organization was identical with that of former days. Party measures were not allowed to come before the House until they had been thoroughly discussed in caucus, and after their appearance the faithful were careful to follow party

[22] *Annals*, 13 Cong. 3, 731, December 3, 1814.

mandates in their votes. To the Federalists it made little difference whether a measure originated with the executive or with Congressional chieftains; in either case they were deprived of all influence in shaping the policy of the government.

Federalist opinion to the contrary notwithstanding, it was virtually a new Congress, and a new system, not a reincarnation of the old, that was operating so effectively at the end of Madison's second term. The Republican organization had undergone a genuine transformation. In 1807 the president had furnished the initiative, and had been responsible for the more important measures introduced in Congress. In 1814 leadership was the prerogative, not of the president, but of prominent members of the House of Representatives. A readjustment had taken place within the party caucus, the result of which was a transfer of the balance of power from the president to Congress.

This fact is revealed in the legislation carried through after the war. The various measures referred to, such as the Second Bank, the protective tariff, and Calhoun's bonus bill, would never have been recommended by a Republican of the old school such as Madison, acting on his own responsibility. They were all nationalistic in tone, and they represented the spirit of the younger element in the House of Representatives. During the interval between the end of the war and his own retirement, for some reason Madison felt that it was desirable to agree with Congress, possibly because he found it easiest to follow the line of least resistance, or possibly because of the approaching presidential election. He was certainly not opposed to Monroe's candidacy. The latter's success, however, depended upon the support of the Congressional caucus, and the president who alienated his party could not hope for influence in the choice

of his successor. Until that important question was settled Madison stayed with his party, in spite of its strikingly nationalistic trend. After Monroe was elected, and after his own term was to all intents over, Madison mustered up courage enough to assert himself. The internal improvements bill was laid before him to sign. With nothing more to hope for or fear from Congress, the president went back to his original party principles and vetoed the bill. It is very significant that he vetoed nothing else, and that only on the third of March, 1817.

After the buoyant Clay and his associates got control of the Republican party organization, they were able to impose their views on the policy of the nation through the medium of the House of Representatives. Their activities naturally brought that body forward, and gave it a more conspicuous place in the scheme of government than it had ever enjoyed before. This increasing prominence carried with it heavier responsibilities, and made necessary a more effective organization. Earlier executives had so dominated Congress that it was not required to provide means for running itself. During this interval of executive weakness and Congressional strength an internal structure was evolved which would enable the House to perform its more complicated duties.

One significant manifestation of this changed order was to be observed in the marked increase in the power and prestige of the presiding officer of the House; under Henry Clay the speakership became practically a new office. Hitherto members who had held that position were chairmen rather than directors of the majority party, and during Jefferson's administration the Speaker was subordinate in actual importance to the floor leader. The president's personal representative had guided the deliberations of the House, and when necessary saw that the dictates of the Commander-in-Chief were obeyed. A

weak president could not expect such unconditional submission, and apparently Madison had no personal agent in the House. Clay, however, was both Speaker and leader of the majority party, something that none of his predecessors had ever been.

This development of the speakership was accompanied by, if it was not actually responsible for, another change of almost equal importance. Under the Clay régime the standing committee system was firmly established, and it was through these subdivisions that the popular Speaker was able to impress the stamp of his theories on legislation. Thus by 1825, so far as its organization was concerned, the House of Representatives had assumed its present form.

NOTE. On January 5, 1813, Josiah Quincy, a radical Federalist, delivered a speech in the House, in which he attempted to describe the striking features of the Republican system of government. His breezy words have attracted more or less attention, and because of that they may be worth quoting in part. It should be carefully noted, however, that his statements hold good only for Jefferson's two terms. Like other Federalists he failed to realize the change which followed Madison's election. At the time he was speaking it was not the cabinet, but the Clay following that was the determining factor in legislation.

"It is a curious fact," he said, "but no less true than curious, that for these twelve years past the whole affairs of this country have been managed, and its fortunes reversed, under the influence of a Cabinet little less than despotic, composed, to all efficient purposes, of two Virginians and a foreigner. . . . I refer to these circumstances as general and undoubted facts. . . ."

"I might have said, perhaps with more strict propriety, that it was a Cabinet composed of three Virginians and a foreigner; because once in the course of twelve years there has been a change of one of the characters. But, sir, that change was notoriously a matter of form than substance. As it respects the Cabinet, the principles continued the same; the interests the same; the objects at which it aimed, the same."

"I said that this Cabinet had been during these twelve years little less than despotic. This fact also is notorious. During the whole period the measures distinctly recommended have been adopted by the two Houses of Congress, with as much uniformity and with as little modification, too, as the measures of the British Ministry have been adopted during the same period by the British Parliament. The connexion (*sic*) between Cabinet Councils and Parliamentary acts is just as intimate in the one country as in the other."

"I said that these three men constituted to all efficient purposes, the whole Cabinet. This also is notorious. It is true that during this period other individuals have been called into the Cabinet. But they were all of them comparatively minor men, such as had no great weight, either of personal talents or of personal influence, to support them. They were kept as instruments of the master spirits. And when they failed to answer the purpose, or became restive, they were sacrificed or provided for. The shades were made to play upon the curtain. They entered. They bowed to the audience. They did what they were bidden. They said what was set down for them. When those who pulled the wires saw fit, they passed away. No man knew why they entered. No man knew why they departed. No man could tell whence they came. No man asked whither they were gone."

"From this uniform composition of the Cabinet, it is obvious that the project of the master spirits was that of essential influence within the Cabinet." He then charged that the "leading influences want not associates, but instruments," therefore they filled the Cabinet with mediocrities, and the civil service with politicians.

"And further, it is now as distinctly known, and familiarly talked about in this city and vicinity, who is the destined successor of the present President, after the expiration of his ensuing term. . . ." One main object of the cabinet is to secure the succession for themselves and their friends. "This is the point on which the purposes of the Cabinet, for these three years past, have been brought to bear—that James the First should be made to continue four years longer. And this is the point on which the projects of the Cabinet will be brought to bear for three years to come—that James the Second shall be made to succeed, according to the fundamental rescript of the Monticellian dynasty." *Annals*, 12 Cong. 2, 562-567.

CHAPTER XII

THE GROWTH OF THE STANDING COMMITTEE SYSTEM

The foregoing outline of Madison's relations with Congress brings out the conditions amidst which the standing committee system came into prominence. The old legislative methods which had worked so well under the successful and watchful supervision of Hamilton and Jefferson had broken down in 1809. During the next two years, as it happened, there was no one in the administration or in Congress able to bring about a restoration of order. In 1811 and thereafter for several years, some of the ablest men in public life were to be found in the House of Representatives. The disorder and confusion of the eleventh Congress was a challenge to their aggressive spirits, and they were ready enough to take up the responsibilities involved in working out and directing the national policy. For means to be used in the attainment of their ends, they employed the ruins of the Jeffersonian machine, formidable enough in its day, but sadly in need of repair. For a few years they worked along with nothing better, and while they accomplished something, they were not able completely to eliminate friction and waste. By 1816 the House had accustomed itself to the extensive use of standing committees, and all accounts of that time agree that legislation progressed as smoothly as it had ever done in the best days of Hamilton or Jefferson. With the Federalists complaining bitterly of the effectiveness of the new system, it is evi-

dent that Clay, the brilliant young Speaker, had solved his problem.

In the early days, far from being the most striking characteristic of the House, as it is to-day, the standing committee was looked upon with distrust, and in Republican ranks it encountered no inconsiderable opposition. The first standing committee of ways and means had been dropped by the Federalists, not because they disapproved of it in principle, but merely because it did not fit in with their scheme of government. As far as they were concerned the Secretary of the Treasury was the only agent needed in the transaction of financial business; from the point of view of real efficiency, Hamilton certainly was superior to any Congressional committee.

To some of the Republicans, on the other hand, standing committees were a positive evil, chiefly because they were not authorized by the Constitution. They asserted that when that document conferred certain powers and duties upon the House of Representatives, it meant not a single member, nor a group of individuals, but the House itself, as an entity. It left the members no choice in the matter, and it allowed them no discretion to decide whether or not they might select a few of their number to act for them, as agents in the performance of such obligations. In the second Congress, Livermore of New Hampshire even went so far as to oppose the appointment of a standing committee of elections, on the ground that jurisdiction in contested elections had been given to the House itself. This duty, he argued, could no more be transferred to any other body than the power of legislation. In spite of his spirited opposition a standing committee was appointed, and either from a sense of humor, or from a desire to defeat the purpose

of the appointment, the Speaker made Livermore its chairman.[1]

One of the most outspoken advocates of this kind of strict construction was Page of Virginia, who consistently opposed the reference of any important measures to committees. In the third Congress, when the Republicans proposed to appoint a select committee to attend to certain details of the financial work of the House, Page spoke vigorously against the appointment. Plans for raising revenue must originate in the House, not in a committee, he argued, and much as he had objected to the reference of such work to Hamilton, he was still less in favor of turning it over to a committee. The report of a committee would carry even more weight than the report of a secretary, and it would be more difficult to get rid of its recommendations. He did not wish to see the House relinquish any part of its constitutional prerogatives.[2]

Two years later, in the course of a debate on a proposal to restrict the carrying trade of foreign vessels, Page tried to prevent reference of the subject either to the committee of commerce and manufactures, or to the committee of ways and means. Instead he advocated the time-honored practice of discussion in committee of the whole. He thought every subject should come before the House "unaccompanied with the opinions of a select committee, or of any individual whatever." He was opposed to "having public measures smuggled into the House, no one could tell how."[3]

This fear of committees was not confined to the early years of Congress, when opposition might be accounted for on the ground that the device was unfamiliar. In

[1] *Annals*, 2 Cong. 1, 144-145.

[2] *Ibid.*, 3 Cong. 1, 532.

[3] *Ibid.*, 4 Cong. 1, 248. The question was referred to the committee of the whole.

1805, when the House had had time enough to become fairly well acquainted with the system, objections were still occasionally heard. The committee on rules in that year recommended the creation of a standing committee on public lands. Bedinger voted against the proposal, because he feared that a "standing committee, vested with the entire business connected with the public lands, should gain such an ascendency over the sentiments and decisions of the House, by the confidence reposed in them, as to impair the salutary vigilance with which it became every member to attend to so interesting a subject."[4]

After 1801 the Federalists criticised the Republicans because of their reliance upon committees, but their objections were based on the fact that they were a Republican device, rather than to any really serious feeling that the system was intrinsically wrong. The following quotation serves as a good illustration of these Federalist comments. This particular writer alleged that the Republicans were constantly trying to increase their power as a party, "and to weaken and embarrass all the regular departments and authorities of the government that might obstruct their designs. More than seven years ago, they tried to shut the doors of Congress to Reports from the Treasury Department. They tried to put all the business into the hands of Committees. They endeavored to make the House the Supreme Treaty making power, and to reduce the President to a cypher. The House, too, by going on to appropriate every item of the public expenditures down to the details of fifty cents, would engross the whole executive business, and as it was impossible the House could do it, the Committees must, and the heads of parties would govern and manage the committees."[5] As time went on most of

[4] *Annals*, 9 Cong. 1, 286.
[5] *Washington Federalist*, January 14, 1802.

these objections disappeared, and standing committees were taken as a matter of course.

The growth of the standing committee system, together with certain important changes in procedure which naturally accompanied the development, went on slowly after 1794. The several steps in the process can be traced in the journals, and in the debates, but the rules do not serve as a safe guide. Customs and practices were very frequently established in the House long before they were accorded formal recognition. For instance, the committee of ways and means had been in regular use for seven years, and the committee of foreign relations for over twenty, before they were added to the list of committees provided for by rule.

The fact that standing committees had been constantly in use for years in most of the state legislatures did not seem to have any marked influence on Congressional procedure. The committee of elections, regularly appointed after the first Congress, was hardly a legislative committee in the sense that it played any part in the transaction of routine business. The first addition to this list of one was made in 1794, by the creation of the committee of claims.[6] In the first session of the fourth Congress the revised rules provided for the appointment of the two committees mentioned above, and for two others, one on revisal and unfinished business, the duty of which was to lay before Congress a list of temporary laws in need of renewal, and also a list of matters left over from the previous session, and the other on commerce and manufactures.[7] A week later Gallatin moved the appointment of a standing committee of ways and means, which became to all intents and purposes one of the regular committees, although no provi-

[6] *Annals*, 3 Cong. 2, 879.
[7] *Ibid.*, 4 Cong. 1, 140, 141, 143.

sion was made for it in the rules until 1802.[8] In 1799 and regularly thereafter there was appointed a committee on post offices and post roads, although there is no mention of it in the rules until 1808.[9] A committee on accounts was established in 1803, one on public lands in 1805, and one on the District of Columbia in 1808. These nine were all provided for by rule when Clay became Speaker in 1811.[10]

This formal list of nine, however, does not show all the standing committees regularly used in the House during the twelfth Congress. By this time the president's annual message had become standardized to the extent that certain stock subjects, so to speak, were always treated at greater or less length therein. For example, in his speech to Congress in 1797 President Adams dealt with foreign relations, Indian affairs, and the general subject of defense. In the House these matters were referred to so-called select committees, although as a matter of fact they remained in existence throughout the session, and in every respect conformed to the definition of standing committees.[11] As time went on these committees on foreign affairs, Indian affairs, the army, and the navy became just as important as any of those provided for in the rules. In the spring of 1812, the committee of foreign relations did not exist, according to the rules, yet in influence it was fully the equal of the committee of ways and means.[12] In 1815 an attempt was made to bring the rules into harmony with actual

[8] *Annals*, 4 Cong. 1, 159.

[9] The first committee on post offices and post roads was appointed in 1796. There was none in the fifth Congress, but beginning with the sixth Congress it was regularly appointed. *Annals*, 4 Cong. 2, 1598; *ibid.*, 6 Cong. 1, 198.

[10] *Ibid.*, 12 Cong. 1, 332-334.

[11] *Ibid.*, 5 Cong. 2, 653-655.

[12] For other examples of these appointments, see *Annals*, 10 Cong. 1, 795, 12 Cong. 1, 334.

practice by adding to the formal list six of these committees on the president's message.[13] For some unknown reason the change was not made, although the committees themselves were still regularly appointed and constantly used. In 1822 the committees on Indian affairs, foreign affairs, military affairs, and naval affairs were formally added.[14]

In the meantime other committees were created, so that in 1825, when Clay's career in the House came to an end, there were twenty-five in all. The new ones, in order of appointment were: judiciary (1813); pensions and Revolutionary claims (1813); public expenditures (1814); private land claims (1816); six separate auditing committees on expenditures respectively in the State, Treasury, War, Navy, and Post Office departments, and on public buildings (1816); manufactures (1819); agriculture (1820). The committee on manufactures was an offshoot of the old committee of commerce and manufacture. Five different attempts had been made to divide that committee, and in 1819 the proposal was carried.[15]

The general cause of this development is evidently to be found in the efforts of Clay and his friends to take control of the government; the particular reason was a steady increase in the amount of routine work in Congress. A large proportion of this business related to clearly defined subjects, and it was natural to classify this, and to concentrate as much of it as possible in the hands of a few committees. That the committee form of

[13] *Annals*, 14 Cong. 1, 380-381, 385. Wilde submitted the resolution to add the six following committees to the list in the rules: military affairs; naval affairs; foreign affairs; militia; roads and canals; ordnance; fortifications, arsenals, etc. The resolution was referred to the committee appointed to revise the rules, but nothing more was heard of it.

[14] The rule providing for the change was adopted in the first session of the 17th Congress, but the first appointments under it were not made until December 3, 1822. *Annals*, 17 Cong. 2, 329.

[15] *Ibid.*, 11 Cong. 1, 230; 11 Cong. 2, 690, 717; 13 Cong. 3, 304; 14 Cong. 1, 381-382; 16 Cong. 1, 708-710.

organization seems to be the natural one for such bodies is shown by the early—as well as the more recent—history of the House of Commons, and of the various colonial and state legislatures. The House of Representatives was not obliged to organize itself for defense against an aggressive executive, because the source of authority of both branches of the government was the same. Nor was it compelled to assume executive functions, because they were attended to by departments subject to the control of Congress. Moreover there was no real need for a single important committee, such as the committee on public bills in North Carolina, to give unity and definite direction to legislation. That kind of work was being done in the caucus, a body well fitted for the performance of such duties, because the executive could take part in its deliberations. What was needed was a more systematic method of transacting business, and the standing committee was a logical solution of the problem.

These general statements are borne out by the orders given to new committees at the time of their first appointment. According to the regular formula in which their duties were outlined, the committees were charged "to take into consideration all such petitions, and matters or things, respecting" commerce or post offices or what not.[16] If more particular directions were necessary they were given. The committee of accounts for example was instructed to "superintend and control the expenditure of the contingent fund of the House of Representatives, and to admit and settle all accounts which may be charged thereon."[17]

In the case of the committee on the District of Colum-

[16] *Annals*, 4 Cong. 1, 141; 9 Cong. 1, 290; 10 Cong. 1, 2127; 11 Cong. 1, 230; 13 Cong. 1, 123; 13 Cong. 2, 796; 14 Cong. 1, 1451.

[17] *Ibid.*, 8 Cong. 1, 790. This statement shows that the committee was not a committee of appropriations in any sense of the word.

bia it was urged that the purpose of the appointment was to "simplify the business relating to the district." Questions of great national concern always had prior claim in Congress, and in order to guarantee proper attention to the needs of the District, its affairs were placed in the hands of a standing committee.[18]

In urging the creation of a separate committee of manufactures Sawyer argued that Congress ought to have "employed on the subject of manufactures the undivided energies of the best talents of the House; he hoped that all the rays of patriotism and genius in the House would be directed to this subject as to a focal point at which they should all converge." Others who spoke in favor of the same measure emphasized the point that the subject of manufactures was so important that it might well occupy all the time of a separate committee.[19] The growing interest in the protective principle outside of Congress, and the steadily increasing amount of legislative business in the way of petitions and bills concerning it created the demand for this particular committee.

Although Clay is generally given credit for the establishment of the modern standing committee system, he was more interested in changes in procedure than in additions to the mere number of committees. In fact, an analysis of the course of this growth shows that of the twelve new ones created during the interval from 1811 to 1825, seven were merely auditing committees, and one was the outgrowth of an old committee. Moreover Clay was Speaker in 1815, when the attempt failed to add to the rules those six committees on the president's message. It may or may not be significant that Barbour, and not Clay, was Speaker in 1822, when four of

[18] *Annals*, 10 Cong. 1, 1486-1487.
[19] *Ibid.*, 11 Cong. 2, 690; 14 Cong. 1, 381; 16 Cong. 1, 708.

them were finally so added. Again, the movement to create a separate committee of manufactures failed twice while Clay was Speaker. There is certainly no evidence to indicate that he took the slightest pains to make any extensive additions to the number of standing committees.

But the fact that the list of standing committees became longer during the years of Clay's leadership in the House is by no means the most important phase of this particular kind of institutional development. The man who made the speakership was concerned primarily with improvements in methods of transacting business, and it is in this field that Clay made his great contribution. In particular, at this time, the standing committees were allowed to take charge of more work, and were given greater responsibilities. It is this aspect of committee development, the process by which committees were gradually woven into the fabric of procedure, that is the really significant feature of Congressional growth. Reduced to its lowest terms, the change consisted in a transfer of important functions from the committee of the whole to various standing committees.

During the first decade of the federal Congress, important measures were invariably discussed at length, and general principles were evolved, in committee of the whole. Not until those preliminary steps had been taken might a subject be turned over to a committee to be put in the form of a bill. Early Congresses were insistent on that point. Nevertheless the fact that standing committees were gradually gaining ground at the expense of the committee of the whole can be observed in protests against the new procedure. All along there is evidence that the champions of the old order were conscious of this process of transition, and that they were doing their best to prevent it. It was not alone in the first

Congress that the Virginians, and others too, for that matter, were "stiff and touchy" concerning the committee of the whole. For several years the Republicans manifested a disinclination to depart from what they considered the only democratic form of procedure.

In the beginning the committees of the House, both select and standing, had been used almost entirely in connection with merely routine work. No power of initiative was given to them. In 1796, for instance, when the House was discussing a resolution having for its object the restriction of the carrying trade to American vessels, a very logical motion was made to refer the subject to the committee of commerce and manufactures. Gilbert said that the House had lately appointed standing committees for considering certain particular subjects, and if the proposal under discussion related to any one of those committees, it ought to be so referred, "in pursuance of the system adopted here for doing business." "If it were a proposition respecting revenue," he continued, "it would, without hesitation, be referred to the Committee of Ways and Means; and if we would uniformly pursue the course of transacting the business lately settled by the House, there would be no hesitation in referring the proposition, in the first instance, to the Committee of Commerce." This very sane exposition of the function of the committees did not accord with the views of the majority. Madison in particular objected to the proposed reference, on the ground that all important propositions ought to be referred in the first instance to the committee of the whole, and his view, rather than the newer one, prevailed.[20]

Again in 1802 Lowndes stated that the principle of the action to be taken with reference to the French Spoliation Claims ought not to be left to a committee.

[20] *Annals*, 4 Cong. 1, 245-247, 249, January 15, 1796.

"That must be decided in the House. It was the duty of the committee barely to make arrangements to protect the House from imposition on the score of facts."[21]

This theory that standing committees must have nothing to do with general principles was again emphasized in 1806. When the president's message was taken up in the early part of the session, Nicholson submitted a resolution to refer that part of it which dealt with the attitude of belligerent men-of-war toward the United States to the committee of ways and means, and the subject was accordingly disposed of in that way.[22] Some weeks later Smilie said that he could not understand why such a reference had ever been made. He thought "it furnished the first instance of a great national principle being referred to any standing or select committee of the House. It had always been usual to refer such principles for settlement, in the first instance, to a Committee of the Whole on the State of the Union, to which committee several memorials on the same subject had been referred." He accordingly moved that the committee of ways and means be discharged from further consideration of the question, and that it be referred to the committee of the whole. No action was taken at the time, but his motion was brought up again a few days later, and carried.[23] Evidently the House believed that the attempt to use the committee of ways and means for the consideration of important questions was an unwarranted interference with a firmly established custom. An error had been made in the original reference, and the House took pains to make the proper correction.[24]

21 *Annals*, 7 Cong. 1, 1003-1004, March 15, 1802.

22 *Ibid.*, 9 Cong. 1, 258, December 4, 1805.

23 *Ibid.*, 9 Cong. 1, 376, 409, 410, 412.

24 For other statements of this same theory, that general principles were to be handled in committee of the whole, and that details alone could be

This evidence shows that the committees were simply fingers of the House, and nothing more, convenient organs for putting business in shape for consideration by the committee of the whole. This view still prevailed as late as 1812. In that year, while speaking of some petitions concerning the repeal of the Embargo, Calhoun said that the objects of reference to a committee were two: to investigate some fact, and to digest and arrange the details of a complicated subject, "so that the House may more easily comprehend the whole. This body is too large for either of these operations, and, therefore, a reference is had to smaller ones."[25]

In this connection it should be noticed that far from being customary to refer every bill to its appropriate standing committee immediately after its introduction, the practice was absolutely unknown. After due deliberation the House might order a committee to draft a bill, and it might refer the bill back to the same committee for technical amendments, but bills might, and often did, go through without being referred to any standing committee.

Subjects, not bills, were referred to committees in the first instance. These were introduced into Congress by resolution, by communication from the president or a head of one of the departments, or by petition. The normal course was to refer the subject to some committee, or to the committee of the whole, for a report. This report when submitted would be discussed in committee of the whole, and then, after the mind of the House was fully made up, a committee would be appointed to draft and bring in a bill in accordance with the specific directions of the committee of the whole.

left to committees, see *Annals*, 4 Cong. 2, 1736; 5 Cong. 2, 693-700; 7 Cong. 1, 477.

[25] *Annals*, 12 Cong. 1, 1395-1396.

A good example of procedure at the time is to be found in the action taken on Jefferson's message of December, 1805. He outlined the difficulties under which American shipping labored, because of aggressive action of European belligerents. The message itself was referred to the committee of the whole; the section mentioned above was then turned over to a select committee. This committee reported, and on January 23, the report was taken up in committee of the whole. It appeared that the committee had recommended the appropriation of a certain sum for harbor defense, but the committee of the whole decided that the sum named was wholly inadequate. The committee of the whole thereupon decided that it needed more information on the subject, so it appointed a committee of two to call upon the president, for more light. On February 28 the discussion was resumed. Finally, on March 25, the House passed two resolutions: one to appropriate a sum not to exceed $150,000 for fortifying the harbors, and the other to appropriate not over $250,000 to build gunboats. A committee was then appointed to draft a bill in accordance with these resolutions. On April 15 the committee of the whole began its debate on the bill to appropriate $150,000 for harbor defenses.[26]

The very leisurely course on this measure shows clearly that the only part played by the committees was to assist the House in getting ready for actual work. All really important steps were taken, and all decisions made, in committee of the whole. The House established the principles, while the committees worked out the details, acting only under specific orders in each instance.

From the nature of the case it was impossible for the

[26] Richardson, *Messages*, I, 383-384; *Annals*, 9 Cong. 1, 258, 377, 378, 381, 391-395, 523, 842-846, 1029.

committee of the whole to keep on in that way. A genuine rush of work would clog the whole system. It is not surprising then to find evidence that the committee of the whole was gradually being relieved of some of this detail, which was in turn passed on to standing committees. For one thing, during and after Jefferson's first term, it was customary to refer the various parts of the president's message to the appropriate standing committees, and to defer action on those matters until after the reports were received. Madison's annual message in 1811 was taken up in committee of the whole, according to custom, but before any debate could take place it was split into parts and distributed to various committees. At this particular time John Randolph of Roanoke urged that the message itself was important enough to warrant full discussion in committee of the whole. This prince of separatists did not deny that the course proposed was regular enough, but he objected to having the message "dissected, taken out of the House and put into the hands of committees," because such action made impossible any discussion of the message as a whole. He was overruled, and the message went to the committees without further debate.[27]

This practice of which Randolph complained would inevitably result in the assumption of more power by the standing committees. They were in fact rapidly ceasing to be mere subdivisions of the House, appointed to investigate and arrange matters of detail, and were becoming bodies not of experts exactly, but of specialists, each one of which was moderately familiar with various phases of its particular subject. Formal reports of such committees would tend to crystallize opinion, and the House itself might very easily get into the habit of letting its committees do all the thinking. Randolph felt

[27] *Annals*, 12 Cong. 1, 334-338.

that dependence upon them made it altogether too easy for a few influential members to dictate Congressional policy on great national issues.

Further evidence of the steadily increasing prestige and importance of standing committees is to be found in the granting of full power to report by bill. As long as their work was confined merely to the investigation and arrangement of detail, naturally reports could not be submitted in the form of bills. Even the committee of ways and means could not report a bill without specific authorization.[28] They gathered material, which had to be arranged in a general way in committee of the whole. It was a fixed custom that a committee must not report a bill until the general principle thereof had been decided upon in committee of the whole.[29]

A debate on this very point was brought on in the fifth Congress, when one committee asked leave to report by bill, because its labors would be greatly lightened if it could put its conclusions in that form. Nicholas promptly asserted that it was the custom of the House to have all important business presented in the form of a simple report, which would afford opportunity for discussion and reflection. Venable followed, by stating that "it was wholly contrary to the practice of the House to go into details before they had settled the principle upon which they were about to act." Gallatin also argued against granting the request on the ground that committees "never came forward at the beginning of a session to ask leave to report by bill." The vote on granting this request was 45 to 45, and the Speaker cast his vote in favor of it.[30] All this opposition was encountered *after* part of the president's message had been referred

[28] *Annals*, 5 Cong. 2, 697.
[29] *Ibid.*, 4 Cong. 2, 1732-1736.
[30] *Ibid.*, 5 Cong. 2, 693-700.

to the committee, so that some kind of a report was expected.

As late as 1803 the House went so far as to refuse a second reading to a bill reported by the committee of commerce and manufactures, for the sole reason that a report in that form had not been authorized. After some discussion the committee was ordered to withdraw its report.[31] Up to 1815 special permission was always required before a committee could present its report in the form of a bill.[32] In 1815 and thereafter blanket permission to report by bill or otherwise was given to all standing committees, and to all committees on the president's message.[33] This in itself raised the committees to a position of commanding importance in the House.

By 1819 such marked progress in the acquisition of power had been made that the committee of ways and means could venture to report a general appropriation bill with the blanks filled. For years it had been customary for the committee to make its report, naming the various objects for which appropriations would be needed, but without stating the specific amounts. These blanks were invariably filled in after discussion in committee of the whole. On this occasion Johnson of Virginia wanted to know what authorization there was for such an innovation. He thought this new plan extremely dangerous; the blanks ought to be filled in by no less an authority than the committee of the whole. Lowndes, the chairman who reported the bill, said in reply that the estimates had been supplied by the various departments. The committee of ways and means had looked them over, and made a few changes that seemed desirable. Any member, he said, might take exception to any or all of the items if he thought they were uncalled for

[31] *Annals*, 7 Cong. 2, 313-314.
[32] *Ibid.*, 13 Cong. 2, 788-789.
[33] *Ibid.*, 14 Cong. 1, 377.

or extravagant.[34] This complaint shows that important duties were being transferred from the committee of the whole to standing committees.

By 1816 it is evident that standing committees had become important enough, if not actually to determine the policy of the House, at least greatly to influence its decisions. Speaking on his motion to repeal the direct tax, Hardin of Kentucky said he approached the subject with considerable reluctance. To his great regret, he observed in the House "an unconquerable indisposition to alter, change, or modify anything reported by any one of the Standing Committees of the House."[35] Three weeks later, in discussing a bill reported by the committee on military affairs, designed to provide for veterans of the War of 1812, Taul objected to the provision which would reward the officers with gifts of land. And yet, he said:

> "I confess that I distrust my own judgment when it is different from that of any of the standing committees of the House. The members composing those committees are selected for their capacity and particular knowledge of the business to be referred to them. Those selections have been judiciously made. The standing committees have a double responsibility on them. Hence it is presumed that every measure, before it is reported to the House, undergoes a very nice scrutiny. Those committees have deservedly great weight in the investigation and decision of such questions as may have come before and been decided on by them."[36]

If more evidence were needed that the standing committees had taken over the management of all important business, it might be found in the following indignant protest. During the debate on a resolution to repeal the

[34] *Annals*, 15 Cong. 2, 468-470.
[35] *Ibid.*, 14 Cong. 1, 747, January 24, 1816.
[36] *Ibid.*, 14 Cong. 1, 989, February 15, 1816.

internal revenue act, Johnson spoke vigorously against the tendency to delegate legislation to standing committees.

"Mr. Speaker," he said, "I am extremely sorry that the resolution on your table, and those by whom it is supported, should have experienced such unmerited treatment. How long, sir, has it been settled, that the rights and the interests of the American people shall be exclusively confided to the few members of this House who compose its standing committees: or, more peculiarly, to the still smaller number appointed to preside over these committees? Is it presumptuous, or criminal, in any other member of this body, to submit a proposition, which he believes calculated to promote the interest, the prosperity, and the happiness of the nation? Are the laws imposing taxes to remain fixed and unalterable, except by the will and pleasure of the Chairman of the Committee of Ways and Means, or by the will and pleasure of the chairman of some other important standing committee? Shall no other member dare to propose the repeal of any revenue law, lest he be denounced as a miserable time-serving trimmer, and hunter after popularity?"[37]

Certainly a marked change had taken place in the relationship between the House and its standing committees since 1803, when a bill was refused a second reading because the committee of commerce and manufactures had not been authorized to submit its report in that form. John Randolph must have indulged in some bitter reflections when he saw committee reports carrying so much weight that ordinary members hesitated to make counter proposals.

If this development can be attributed to the efforts of any one man, Henry Clay may be held responsible, or given the credit for it. His contributions to legislative procedure were all in the direction of a more effective

[37] *Annals*, 14 Cong. 2, 963, February 17, 1817.

organization, the result of which was to speed up operations in the House. Just as his restrictions on useless debate relieved the pressure in one direction, so this transfer of duties and responsibilities from the committee of the whole to standing committees, and the division of labor among them, lightened it in another. The practice of doing everything of importance in the committee of the whole may have been democratic, but there was always the danger of aimless drifting. The records of the eleventh Congress show what actually did happen. The old system was literally wrecked by a combination of inefficient leadership and cumbersome procedure. Although it could not guarantee the House against a recurrence of the first of these evils, Clay's work did tend to prevent another such unfortunate combination of the two.

Among the defects inherent in the committee system there was one in particular, apparently unavoidable, which might at any time occasion troublesome confusion. It was impossible to delimit the fields of committee jurisdiction so precisely that there would be no overlapping. As a result the House would sometimes lose itself in a fruitless debate over the proper reference of a certain subject, or worse still, two committees might each consider the other responsible for attending to a measure, and consequently neither would act.

Even in the case of the standing committee of elections, where there was apparently no room for doubt, some members could not be made to understand what kind of business properly lay within its field. In the second Congress, when a petition alleging certain irregularities in Wayne's election came up for discussion, Baldwin moved to refer it to the standing committee of elections. It was immediately objected that the question "did not come within their cognizance." The petition was there-

upon laid upon the table for ten days, when it was referred to a select committee.[38]

In 1796, when the House was discussing Smith's resolution, the object of which was to exclude foreign shipping from American carrying trade, members found it hard to agree whether to refer it to the committee of commerce and manufactures, the committee of the whole, or to a select committee.[39]

In dealing with the president's speech or message, the House was often inconsistent in referring its various parts to committees. For example, in 1797, one section which clearly belonged to the committee of commerce and manufactures was referred to a select committee, and another part regarding finance went to a select committee instead of the committee of ways and means.[40] In 1798 one section of Adams' speech concerning regulations to prevent the introduction of contagious diseases was referred to the committee of commerce and manufactures, after the failure of an attempt to give it to a select committee. Another section which dealt with certain aspects of the collection of import duties was referred to the committee of commerce and manufactures, instead of the committee of ways and means.[41]

The following instance is perhaps not of the utmost importance. In 1822 one James Bennett petitioned Congress to pass a special act giving him and his heirs for forty years "the right of steering flying machines through that portion of earth's atmosphere which presses on the United States." The gentleman in question had invented a flying machine "by which a man can

[38] *Annals*, 2 Cong. 1, 175, 210.

[39] *Ibid.*, 4 Cong. 1, 245-249. For a similar example of confusion, see *ibid.*, 4 Cong. 2, 1737-1746.

[40] *Ibid.*, 5 Cong. 2, 653-655.

[41] *Ibid.*, 5 Cong. 3, 2443. For other examples, see *ibid.*, 2490; 9 Cong. 1, 333, 342-343; 15 Cong. 2, 367-368.

fly through the air—can soar to any height—steer in any direction—can start from any place. . . . " Milnor moved to refer the petition to the committee on the judiciary. Sergeant, the chairman, objected, on the ground that the "committee did not undertake to soar into regions so high. Their duties were nearer the earth." Walworth then moved to refer it to the committee on roads and canals. The House negatived that proposal, and someone suggested the judiciary again. Sergeant rose to protest, for the reason "that it was above their reach," and also "that they had so much business before them of a terrestrial character, that they could not devote their time to philosophical and aerial investigation." The petition was finally laid on the table.[42]

Perhaps the best illustration of this difficulty is to be found in the operations of the committees of ways and means and of commerce and manufactures. The fundamentally important subject of the tariff lay clearly enough within the fields of both committees, so it is not surprising that the House was puzzled when it had to refer matters to them. One committee could not frame a protective tariff bill without making a rent in the whole fabric of finance, while the other would naturally let the needs of the Treasury take precedence over the demands of manufacturers. At first, before committees were given free rein in framing bills, the only problem was that of reference. The first brush between the adherents of the two committees came in 1801, when Smith moved that the committee of commerce and manufactures be directed to inquire whether any changes might be made in the tariff laws. Griswold objected at once, because the subject dealt with revenue, and he moved to refer the matter to the committee of ways and means. Smith

[42] *Annals*, 17 Cong. 1, 1361.

insisted that the subject ought to be discussed by "commercial men, of whom alone the Committee of Commerce and Manufactures was composed." By taking advantage of their expert advice, the House might learn whether the duties should be increased or diminished. Griswold reiterated his argument that the motion contemplated a revision of the revenue, and therefore belonged to the ways and means, "for which purpose alone that committee was formed." Speaker Macon evaded the very pretty problem thus presented to him, and ruled that either reference was "perfectly in order." Smith's motion was finally carried.[43]

A similar difficulty was encountered in referring petitions asking for changes in the revenue, or urging further protection for manufactures. In the fourteenth Congress, petitions on such subjects were referred to both committees, apparently without any attempt at consistency. If any general principle is discernible, it would appear that petitions involving questions primarily of revenue, and secondarily of protection, were referred to the committee of ways and means. Others went to the committee of commerce and manufactures. It is difficult however to draw any hard and fast line.[44]

After the committees were given more freedom in reporting bills, this conflicting jurisdiction at times

[43] *Annals*, 7 Cong. 1, 317-318.

[44] *Ibid.*, 14 Cong. 1, the following petitions were referred to the committee of commerce and manufactures: from makers of cotton cloth, urging a prohibitive duty on coarse cotton goods, p. 382; from manufacturers in Massachusetts, asking for legislation to encourage cotton manufacturing in the United States, p. 392; from woolen manufacturers in Massachusetts and cotton manufacturers in New Jersey, for the same thing, pp. 392, 395; several asking for protection on white lead, cotton, etc., pp. 472-473.

The following went to ways and means: from sugar planters in Louisiana, asking that the war duties on foreign sugar be made permanent; one asking for a repeal of the tax on manufactured tobacco, and another asking for the repeal of the direct tax on salt, pp. 458, 472-473, 678.

threatened to become serious. There was the possibility that both committees might undertake the same work, or that each would try to hold the other responsible, so that there would be serious friction on the one hand, or a total neglect of important business on the other. Under such conditions it would have been the natural thing for the two committees concerned to get together outside of Congress, smooth over their differences, and agree on some common line of action. The curious thing is nevertheless that in some cases they almost ignored each other's existence. On April 24, 1820, Smith, chairman of the committee of ways and means, submitted his report, in which he gave a general survey of the financial situation. He announced a probable deficit for the ensuing year, urged Congress to economize, and laid before the House a bill providing for a loan. He made no reference to the tariff, and did not even hint that any changes might improve the conditions which he described.[45]

One week later, Baldwin, chairman of the committee of manufactures, reported a new tariff bill. In introducing it, he referred to the embarrassment experienced by himself and his fellow committeemen in attempting to deal with a subject which lay partly in the field of another committee. He had planned at first, he said, to report a bill dealing with manufactures alone, but the Treasury was empty, and the committee of ways and means had declined to recommend any changes in the revenue system. Consequently he assumed full responsibility, and tried to work out a plan that would protect manufacturers and replenish the Treasury at the same time. He realized that in recommending a general revision of the tariff, he might encroach on fields of other committees,

[45] *Annals*, 16 Cong. 1, 1837-1845.

but if they neglected their duties, they could hardly blame him for bringing forward badly needed bills.[46]

During the years from 1801 to 1820 more work connected with the tariff was done by the committee of manufactures than by the committee of ways and means.[47] In 1821 Monroe's recommendations on the subject of protection were referred to the committee of manufactures, in accordance with established custom. In dealing with this subject, without taking the trouble to find out what the regular practice was, Professor Burgess jumped at the conclusion that this reference was a new departure. His statement, incorrect both in fact and in inference, runs as follows: "Heretofore this subject had been referred to the committee of Ways and Means, the regular revenue-raising committee. Its reference now to the committee on Manufactures is good evidence that the House of Representatives regarded a protective tariff as a subject which Congress might deal with independently, and without any necessary connection with the subject of the revenue."[48] This argument is worthless, for the simple reason that Congress did not depart from precedent in this instance.

A curious debate over the tariff of 1824 brings out some of the consequences of this conflicting jurisdiction. After the chairman of the committee of manufactures had reported the new tariff bill, Owen immediately asked that the committee of ways and means be directed to examine and report its probable bearing on revenue, particularly as to whether the proposed measures would increase or decrease the governmental income. He admitted that there was ground for criticism in calling upon that committee, because if a deficiency should arise

[46] *Annals*, 16 Cong. 1, 1916-1918.

[47] For two other examples, see *Annals*, 8 Cong. 1, 949; 11 Cong. 1, 363-366.

[48] Burgess, *The Middle Period*, p. 110.

from the act of one committee, it, and not another, should be called upon to make good the loss. "From this opinion, should it be entertained," he said, "I must dissent; over public revenue and public expenditure, the Committee of Ways and Means have exclusive jurisdiction; from that committee, alone, then, can any information upon these points come officially, and in this shape we ought to have it." McLane in reply said that he did not object to the call for information, but he did disapprove of the method proposed. Recourse should be had to the chairman of the committee who reported the bill, as he had all the facts at hand, and he must have figured out the probable effect of the bill. If the ways and means were called on, they would simply go to the committee of manufactures for information. The bill in question was not drawn to raise revenue, but to protect manufactures, hence it "appertained wholly to the other committee."

Trimble said that if the members really wanted an opinion of the probable effects of the bill, they ought to go to the Secretary of the Treasury. He was at the head of the financial system, and would be able to supply all desired information. Ingham agreed with Trimble. He said such information always came from the secretary, and if the House should apply to the committee of ways and means, it would have to go to the Treasury for the facts. Floyd however objected to calling on the secretary for information. He thought it was inconsistent with the dignity of the House to go for information concerning its duties to one of the president's secretaries. After forty-two pages of such discussion, the House finally voted, ninety-six to ninety-two, to table Owen's resolution.[49] With two different committees and the

[49] *Annals*, 18 Cong. 1, 1587-1629, especially 1586, 1587, 1589, 1614, 1615, 1629.

Secretary of the Treasury all trying to take a hand in directing the revenue system, it is not surprising that the administration of American finance has been characterized by unbusinesslike confusion, and worse yet by careless extravagance.

By 1825 the main outlines of the committee system were clearly drawn. The House was divided into small groups, each of which was held responsible for the transaction of the greater part of all work relating to some one particular subject. Even at that time the House was inclined to pass with little scrutiny bills reported by important committees. Subsequent development has consisted chiefly in the working out of details of the system, rather than in the establishment of any new principles. The important part of legislation was done in committee rooms rather than in Congress, and as time went on it became increasingly difficult to bring any business before the House until it had been passed upon by the appropriate committee.

CHAPTER XIII

COMMITTEES, CABINET, AND PARTY

From one point of view, the standing committees were specialized agents of the House; from another, they were avenues of communication between the House and the cabinet. In any discussion of American federal legislative methods, it is necessary to keep constantly in mind the fact that the different branches of the government are separated by the Constitution. While it prevents the possibility of any serious encroachment of the executive upon the legislature, this barrier has made necessary the evolution of some means whereby harmonious and concerted action may be secured. The caucus had answered the purpose well enough for a time, but it was an undifferentiated body, not well adapted to the changed conditions after 1812. The constant pressure of increasing business, along with the steadily growing prestige of the House itself, demanded the use of other methods, and the standing committee system proved to be an excellent medium of intercommunication. There was a standing committee to correspond to each one of the important executive departments: Treasury, State, War, Navy, Justice, and the Post Office. The system was flexible enough to adjust itself automatically to any shifting of leadership. Whether the master minds were in the executive or in the legislature, they could always impress their views on the policy of the government through the standing committees, because the current could flow in either direction.

In 1795, when, through Gallatin's efforts, the commit-

tee of ways and means was brought into existence, this idea of coöperation was not uppermost in his mind. In fact, if it was not exactly a substitute for the secretary, that committee was designed to be a check upon him, rather than an agent for coördinating the financial operations of the House and the Treasury. Such a condition of separatism could not endure very long. The Secretary of the Treasury and the committee of ways and means were too closely bound together by their common interests, and even in 1796 there is evidence that the two were beginning to work together.[1] By 1797, according to Fisher Ames, the committee had ceased to act independently, and was relying implicitly upon the secretary.[2]

From the nature of the case there would be few indications of intimacy between committees and departments until the committees themselves became important enough to warrant attention, in other words, until about the time of Clay's speakership. There is, however, a little evidence of this coöperation before that time. In 1806 the chairman of the committee, appointed to consider that part of Jefferson's message dealing with harbor defense, reported that the committee had conferred with the Secretary of War on the subject, and that the secretary had furnished the committee with a general survey of the condition of the coast defenses, together with an estimate of the probable cost of needed repairs.[3] This statement elicited no particular comment, so such coöperation must have been taken as a matter of course.

Gallatin had always been ready to give the House assistance at any time and in any way. After Madison's election he was temporarily excluded from active leadership, but by 1812 he was again working in concert with the standing committees, particularly with the committee

[1] *Annals*, 4 Cong. 1, 379-380, 917.
[2] Hamilton, *Works*, VI, 202.
[3] *Annals*, 9 Cong. 1, 380.

of ways and means. The relationship between them was close enough to call forth a complaint from Calhoun. With reference to a certain report submitted by the committee he remarked: "What, sir, constitutes a feature in the report still more extraordinary and objectionable, is the apparent understanding between the Committee and the Treasury Department. They coyly refuse to recommend any positive act of legislation, while they indirectly intimate what they wish and expect the Secretary of the Treasury to do."[4] Shortly afterward, in referring to shipping licenses, Grosvenor said that the bill under discussion was a "Treasury machine, invented by the able Secretary of that Department. . . . Sir, to my eye, the hand of the honorable Secretary is apparent in every part of the machinery." On February 9, Gallatin wrote to the chairman of the committee of ways and means, so Grosvenor said, and recommended a tax of six dollars per ton on foreign shipping. On February 15, a bill for that purpose was reported. "The honorable Secretary never speaks to this House in vain."[5]

As a good Federalist, Webster was inclined to follow his party in criticising this evident reliance of the committee upon the secretary. At one time he wrote that the committee of ways and means had decided to report all tax bills as they came from the Treasury, and to leave all discussion on the subject to the House.[6] After Gallatin left office his successors maintained this connection, and there is throughout evidence of intimacy between the Treasury and the committee of ways and means.

During the War of 1812, Monroe, acting Secretary of War, was constantly consulting with the House committee on military affairs. At the very beginning the committee called upon him, to get information regarding

[4] *Annals*, 12 Cong. 2, 315-317.
[5] *Ibid.*, 12 Cong. 2, 1139-1140.
[6] Webster, *Letters*, p. 37 (Van Tyne ed.).

the number of troops to be raised.[7] In the next session Monroe wrote that he had received letters from the military committees of both houses, with reference to the organization of the regular army, and of the volunteers, in which he was requested to give advice as to needed additions. Monroe sent in a long report, and also supplied the committee with an outline of the plan of campaign for 1813.[8] To the *Columbian Centinel* such intercourse savored of tyranny. "The truth is, Mr. Secretary Monroe has informed them that the war requires that the *Standing Army* should be augmented to FIFTY THOUSAND men," and that the bounty for enlistment ought to be increased. "The Committee are about to register the edict. . . . "[9]

Congress depended upon Monroe to furnish the necessary bills for increasing the army. In 1814 Webster wrote that the conscription bill was before the House. "The bill is drawn principally on Mr. Monroe's first plan. Of course we shall oppose such usurpation all we can."[10]

Naturally the committee of foreign affairs maintained close relations with the executive. It had collaborated with the Secretary of War in working out a plan of defense in 1811.[11] Then the bill for the sixty days embargo that preceded the declaration of war was prepared by the committee of foreign relations, with the able assistance of Albert Gallatin. The procedure in that instance was significant. Madison sent in a special message, recommending the embargo, and the message was referred to the committee of foreign relations. After a brief interval, Porter, the chairman, reported a bill, which had

[7] Monroe, *Correspondence*, V, 206-207.
[8] *Ibid.*, 227-241.
[9] *Col. Cent.*, December 30, 1812.
[10] Webster, *Private Correspondence*, I, 245-246.
[11] *Col. Cent.*, December 7, 21, 1811; January 4, 1812.

apparently been prepared before the message was received. Porter himself said that the bill was "draughted according to the wishes and directions of the Secretary of the Treasury."[12]

When the House and the cabinet were on terms of political friendship, the committee of foreign relations, or at least its chairman, was on very intimate terms with the Secretary of State. "The Chairman of the Committee of Foreign Relations has always been considered as a member in the confidence of the Executive," wrote John Quincy Adams, "and Mr. Forsyth acted thus at the last session. The President has hitherto considered him as perfectly confidential, and directed me to communicate freely to him the documents concerning foreign affairs, particularly those with Spain, which I have done."[13] It was customary for the chairman to call upon the Secretary of State at the opening of a session, to find out whether or not there would be any measures regarding foreign affairs which would require legislative action. Then there would follow a general conversation about important questions pertaining to the work of the department.[14] In some cases the Secretary of State would give the chairman of this committee important state papers, on the express condition that they would not be laid before Congress. The two men went over the whole field of foreign relations very thoroughly, and the chairman was in the habit of giving the secretary a résumé of his report before he submitted it to Congress.[15]

More than that, the chairman of the committee of foreign relations was in the position practically of an *ex*

[12] *Annals*, 12 Cong. 1 (Suppl. Journal), 1587-1588. John Randolph subsequently spoke of it as: "The embargo, engendered from a fortuitous concourse between the Executive and the Committee of Foreign Relations. . . . " *Ibid.*, 12 Cong. 1, 1385.

[13] J. Q. Adams, *Memoirs*, IV, 65.

[14] *Ibid.*, IV, 183-184.

[15] *Ibid.*, IV, 210.

officio member of the cabinet. Adams reported one instance when Monroe asked him to notify the members of the cabinet to meet the next day to discuss the Florida question. According to the president, "it had been heretofore customary for the Committee of Foreign Relations to act in concert with the Executive, and to show their reports before making them. He thought they ought to do so now." At the ensuing cabinet meeting Holmes, the chairman, was present, and gave the cabinet an outline of his proposed report.[16]

Adams' numerous comments make it evident that for a part of Monroe's first term, the committee of foreign relations was little more than the legislative agent of the department of State. Certainly the relationship was so intimate that there was little friction. Such a connection naturally suffered when Clay began his assaults upon the administration. In 1819 Adams wished to have a commission appointed to adjust the Florida boundary. He made known his desire to Holmes, chairman of this committee, and Holmes in turn laid the proposal before the House. He moved to amend the bill which provided for the occupation of Florida by adding clauses authorizing the appointment of such a commission, and the appropriation of the amount needed to defray the expenses of the members. Holmes expressly stated that he proposed the amendment because it had been asked for by the Secretary of State, who considered it desirable, and not because the committee thought it was essential. In reply to a query by Clay, Holmes admitted that Adams had made suggestions with reference to the amount of the appropriation. Much to Adams' displeasure, the amendment was not carried.[17]

His defeat on this measure marked the end of his influ-

[16] J. Q. Adams, *Memoirs*, IV, 212-214.
[17] *Annals*, 15 Cong. 2, 1428-1430; J. Q. Adams, *Memoirs*, IV, 281.

ence with the committee of foreign relations. In December, 1819, John Randolph was placed on the committee, and henceforth confidential intercourse between secretary and committee practically ceased. Communications of importance could no longer be laid before the committee in secret, because Randolph would be sure to report the whole proceeding to the House.[18] When Monroe wished to furnish Lowndes, the new chairman, with some papers which could not be made public, Lowndes preferred not to see them, because he could not make any allusions to his special information without giving rise to harmful suspicions.[19] On one subsequent occasion Adams made the blunder of laying before the committee the documents concerning his negotiations with France. "It had always been considered as a practical rule," he wrote, "that the Committee of Foreign Relations should be the confidential medium of communication between the Administration and Congress. The Speaker had now appointed a committee entirely new, of members chiefly known to be hostile to the Administration, with a Chairman generally understood to be at personal variance with me. To this committee all the papers relating to a complicated and delicate pending negotiation with France are confidentially committed, and the next day one of the members of the committee offers a resolution calling for them all."[20]

Adams also referred to relations between other committees and the cabinet. "Now, Crawford," he wrote, "is constantly boasting that he draws up bills for committees, who present them exactly as he draws them."[21] At one cabinet meeting the draft of a bill by Newton, chairman of the committee of commerce, was

[18] J. Q. Adams, *Memoirs*, IV, 478.
[19] *Ibid.*, IV, 505-506.
[20] *Ibid.*, V, 474-476.
[21] *Ibid.*, IV, 281.

examined and discussed. Various amendments were proposed, and Crawford was asked to write a new section to take the place of the third in Newton's bill.[22] Again, Southard, the Secretary of the Navy, showed Adams the draft of a bill which he planned to have laid before the House by the chairman of the committee on naval affairs, the object of which was to establish a naval school.[23]

Although this direct connection between committees and cabinet was taken as a matter of course, it was not considered proper for a committee chairman to negotiate directly with the president. Adams said that "Discussion between the President and committees of either House of Congress can never be proper, and are never sought but by Chairmen of committees disaffected to the Executive."[24]

Before these habits of coöperation had become regular, members were accustomed to profess more or less horror when cabinet officials made recommendations to the House. As a result of several years of such intercommunication, through the medium of caucus or standing committee, the House not only expected the secretaries to make suggestions regarding necessary legislation, but even looked with suspicion at important measures which were not so recommended. When the bill for chartering a new bank was brought forward in 1814, Grosvenor took exception to the manner of its introduction. He believed it was unconstitutional to charter a bank except to accomplish national objects, and to facilitate the handling of the revenue. "As to those objects, however," he said, "it was the constitutional duty of the Secretary of the Treasury to devise the ways and means, and if such an institution were necessary for the purposes of Government, it was the

[22] J. Q. Adams, *Memoirs*, IV, 504, 509.
[23] *Ibid.*, VII, 90-91; also V, 131-132.
[24] *Ibid.*, VI, 267.

duty of that officer to recommend it. He wished the Secretary to say whether such a bank was necessary, and not that the subject should be referred to a committee of this House, and they to inquire privately of the Secretary as to the expediency of the measure. When the proposition came in at the proper Constitutional door, and appeared to be necessary . . . ," he would not object. "If such a necessity exists, he wished the Government to come forward and declare it, and not shrink from the responsibility of recommending the measure."[25] Oakley said that he did not believe "it was so exclusively the duty of the Executive Department to recommend the establishment of a National Bank. . . ." Even though the measure did not come in at the proper door, that was no reason for condemning it.[26] Gaston agreed with Grosvenor, and expressed his "entire disapprobation of the indirect introduction of Executive recommendations into the House, as producing legislation without intelligence, and action without responsibility. . . ." He would not vote against a measure simply because the executive had not recommended it openly, but he would have been better pleased "if the measure had been directly recommended by the Executive. . . ."[27] To ward off criticism of that kind, Dallas, the new Secretary of the Treasury, recommended the incorporation of a bank in his next annual report.[28] Referring to the bill which was introduced in accordance with that suggestion, Ingersoll said, "The Treasury Department, in concert, and after long consideration with the Committee of Ways and Means, assuming the responsibility of their respective stations, have recommended to us the plan of a bank which is comprehended

[25] *Annals,* 13 Cong. 2, 1942.
[26] *Ibid.,* 13 Cong. 2, 1943.
[27] *Ibid.,* 13 Cong. 2, 1945.
[28] *Ibid.,* 13 Cong. 3, 403.

in the bill under discussion."[29] The bank bill that was finally passed was framed by a select committee of which Calhoun was chairman, but the committee merely followed the plan laid before them by Dallas. When the bill was under discussion in Congress, Calhoun was constantly in touch with the Secretary of the Treasury.[30]

This conviction in the House that "government bills" ought to be recommended by the proper executive authority was emphasized in still another way. On the very day when Grosvenor was objecting to the method of the introduction of the bank bill, Wilson submitted some resolutions, urging that the committee on military affairs be instructed to inquire into the expediency of providing by law for opening and improving military roads. Under ordinary conditions, he said, it might be expected that the War department would be aware of the need, if it existed, and would call the attention of Congress to the subject. At that time, however, the Secretary of War was too busy to attend to such matters. But his department would have general oversight of the work, and it was proper to refer the question to the committee on military affairs, because it was "more conversant with the channels of information to be derived from the military department, and in the daily practice of receiving it, which must be supposed to afford a facility in their inquiries which another committee might not so conveniently possess."[31] Two years later, when it seemed desirable to make certain changes in the organization of the War department, and of the militia, Congress called upon the Secretary of War to furnish the necessary bills. In compliance with that request the bills were laid before the House early the next session.[32]

[29] *Annals*, 13 Cong. 3, 604.
[30] *Ibid.*, 14 Cong. 1, 494-514, 1229-1233.
[31] *Ibid.*, 13 Cong. 2, 1935-1936.
[32] *Ibid.*, 14 Cong. 1, 1408-1409; 14 Cong. 2, 270-275.

There were some members who thought that this coöperation between the two branches of the government would in time make the House nothing but a mere auxiliary of the executive. Hardin complained that the manner in which legislative business was carried on "destroyed the freedom of legislation altogether. The President signified his will to the Heads of Departments—they made their annual report to the House, recommending the adoption of certain measures; it was pretty well understood that what they recommended was the will of the Executive; the reports of the Heads of Departments were referred to the standing committees, a majority of whom were followers of the Executive; they kept in secret conclave for a month or two, until the House became all anxiety, and solicitude was on tiptoe. Each day an inquiry would be made when they would report? Not ready yet, would be the answer. The members of the committee looked grave, pensive, and melancholy, as if oppressed with a mighty weight of thought. At last they would burst upon the House with their report; and what was it when made? A mere echo, a mere response to Executive will, with small and immaterial variations, intended for the purpose of inducing the House to believe that they had matured the subject well, when, perhaps, they had never thought about it; pre-determined, from the first, to re-echo back in substance Presidential will; and when the report thus made finds its way into the House, it is fixed. Right or wrong, it must not be altered. Each member of the committee adheres to it, each hanger-on supports it, and all, as the poet says, 'who live and never think' support it."[33]

The standing committee system is often criticised on the ground that it tends to scatter the energies of the

[33] *Annals*, 14 Cong. 1, 747-748, January 24, 1816.

House, and to prevent the fixing of definite responsibility. Even though this censure is justifiable, it is difficult to conceive of any other arrangement which would have fitted in so well with the peculiar conditions in the House of Representatives. Institutions are merely mechanical devices which come into existence to meet some peculiar want, the organs to perform certain definite functions. As the federal government gradually learned how to operate, the House was compelled to evolve a system which would satisfactorily solve, not one or two, but three problems. It was not enough that the committees should attend to routine work in Congress, and in addition serve as avenues of communication between cabinet and legislature. It will be recalled that in order to enact their measures, the Federalists, and after them the Jeffersonians, were compelled to band their forces together in a kind of extra-Congressional organization, through which the party could exert its strength. Those in touch with the government knew that legislation was carried on, not by Congress as such, but by the inner circle of majority leaders. Now the committee of the whole had been of necessity relieved of some of its important duties, because of the increasing amount of work. If division of labor was necessary in Congress, it was equally desirable in the party. The caucus was not discarded by any means, but it could be left free to deal with the more general aspects of party interests, because the standing committees might safely be charged with much of the detail. Consequently, these committees became in a way the specialized agents of the majority, just as they were of the House, and of the executive. As a result, the three indispensable factors in the government: executive, legislature, and political party, were provided with a number of common deputies, by means of which the different forces at work could be

united in a single common channel. When executive and legislature were actuated by a desire to work together, this system made possible the proper correlation of these three factors, the avoidance of a duplication of labor, and the elimination of waste energy.

Party control of the committees was assured through the method of appointment. Almost from the beginning the Speaker was empowered to select the committees,[34] and by the time standing committees had become at all important, the Speaker himself was chosen in party caucus. Just how early this practice became regular is not known; probably very soon after party lines were drawn. With reference to the choice of Speaker, Miss Follett states "that although some concerted action must always have been necessary to produce a majority result, caucuses as we know them did not appear until towards the middle of the century."[35] Inasmuch as caucuses were to all intents and purposes electing the president of the United States long before the middle of the century, and differed from those as we know them only perhaps in being more influential, the statement just quoted is not particularly illuminating. As a matter of fact there are occasional newspaper references to show that the speakership did come within the range of caucus deliberations even in the early days. "Among the extraordinaries of the day," ran an item in the *Columbian Centinel* of December 7, 1799, "may be ranked the *caucussing* of the Jacobins at *Philadelphia,* in favor of Mr. Rutledge, of South Carolina, as Speaker, in oppo-

[34] In the first session of the first Congress, the Speaker appointed small committees, but the House chose all those of more than three members by ballot. *Journal House of Reps.,* 1 Cong. 1, 6. In the second session the Speaker appointed all the committees, unless the House directed otherwise; *Journal,* 1 Cong. 2, 140. In the second Congress the Speaker was authorized to appoint committees until the House should see fit to make other arrangements. *Annals,* 2 Cong. 1, 142.

[35] Follett, *Speaker of the House,* p. 40.

sition to Mr. Sedgwick, *because* the latter is a *northern man. . . .*" Again in 1814, the same paper mentioned the election of Cheves to succeed Clay, who had resigned to go to Ghent. Cheves was elected, in spite of the fact that his opponent, Grundy, "was not only the caucus but the white-house candidate."[36] After Clay's attack on the Monroe administration, there was apparently a caucus held to consider a possible successor for him. Monroe told Adams that several members had come to ask him "whether it would be advisable to displace Clay as Speaker." The President advised against it, "because it would be giving Mr. Clay more consequence than belongs to him."[37] These references make it fairly evident that the Speaker was elected by a party caucus.

As early as 1797, too, there is evidence that party considerations were becoming an important factor in the selection of committees.[38] Then, in 1802, John Randolph, at that time one of the most conspicuous of the Republican leaders, was chairman of so many different committees that he could not attend to them all.[39] This in itself is an illuminating commentary on party practices in those days. By 1813 standing committees were avowedly made up in the interests of the dominant party. Webster wrote that in the appointments for that session "A Federal name is now & then put in, to save appearances."[40] The next year King complained that on the committee of ways and means New England had no representation, while the middle, southern, and western states were represented. "It may have been an accident, or he (the speaker) may only have followed the bad example of some bad predecessor," he said. Even on

[36] *Col. Cent.*, January 26, 1814.
[37] J. Q. Adams, *Memoirs*, IV, 471.
[38] "South Carolina Federalists," *Am. Hist. Rev.*, XIV, 786.
[39] *Annals*, 7 Cong. 1, 478.
[40] Webster, *Letters*, p. 34 (Van Tyne ed.).

the least important committees there was a majority against New England.[41]

In 1820 Adams charged that in appointing the committee of foreign relations, Clay "selected that one with a view to prevent anything's being done congenial to the views of the Administration."[42] John Randolph's presence on the committee that year would in itself prove that Adams was telling the truth.

Whether the composition of committees was actually decided in caucus or not made little difference. The Speaker was the caucus nominee, and even Henry Clay could not take the risk of antagonizing his fellow members in the House. In 1827 it appears that the appointment of the standing committees was delayed in order that the caucus might have time to decide on the personnel.[43]

It was very seldom that disaffected members made any attempt to alter the method of committee appointment. In 1806 John Randolph's action in holding back, or refusing to make a report for the committee of ways and means, led to a movement in favor of appointment by ballot. In offering a resolution, the aim of which was to take the appointing power away from the Speaker, Sloan said, "I offer these resolutions for the purpose hereafter of keeping the business of the House of Representatives within its own power, and to prevent in future the most important business of the nation from being retarded by a chairman of the Committee of Ways and Means, or of any other committee, from going to Baltimore or elsewhere," and staying six days, and also to "prevent in future the chairman of the Committee of

[41] *Annals*, 13 Cong. 3, 444-445, 449.

[42] J. Q. Adams, *Memoirs*, IV, 507.

[43] *Ibid.*, VII, 373-374, 377: "It is understood that the appointment of the committees in the House by the new Speaker is to be settled by the leaders of the party."

Ways and Means from keeping for months the estimates for the appropriations necessary for the ensuing year in his pocket, or locked up in his desk, whereby the different appropriation bills may be kept back (as they have been this session) to the great injury of the nation. . . . *Resolved,* That hereafter all standing committees of the House of Representatives shall be appointed by ballot, and shall choose their own chairmen.''[44] Nothing was done at the time, but a vote was taken on the subject early the next session. By an extremely narrow margin the Speaker was permitted to keep his power of appointment.[45]

A similar attempt was made in the tenth Congress. Blount said that in order to relieve the Speaker of a very unpleasant duty, it would be desirable to have the committees named by ballot, so he made a resolution to that effect. He thought the proposed method would be ''most satisfactory to the House and to the Speaker also.'' Smilie defended the regular practice. The ballot method had been resorted to occasionally, he said, and it had proved to be unsatisfactory. The Speaker was well qualified to do the appointing. In naming committees, he argued, ''it was proper to select the most fit characters for each—on the Committee of Commerce and Manufactures, for instance, there ought to be placed commercial men; on the Committee of Ways and Means,

[44] *Annals,* 9 Cong. 1, 1114-1115.

[45] *Ibid.,* 9 Cong. 2, 111. In his *Life of Macon,* pp. 208-209, Professor Dodd states that the northern Republicans feared Randolph's reappointment as chairman of the committee of ways and means, and to prevent it they tried to take the appointing power away from the Speaker. The greatest of all northern Republicans, however, Albert Gallatin, was extremely anxious to have Randolph continued as chairman of the ways and means committee. On October 30, 1807, Gallatin wrote as follows to his wife: ''Varnum has, much against my wishes, removed Randolph from the Ways and Means and appointed Campbell, of Tennessee. It was improper as related to the public business, and will give me additional labor.'' Adams, *Gallatin,* p. 363.

such as were best acquainted with the subjects of finance, etc., whereas in committees appointed by ballot, it will depend on accident whether fit persons be appointed or not. Besides, in such elections there is no responsibility; the contrary is the case when the Speaker selects the members of a committee. He is responsible for the choice he makes, and will therefore exercise great precaution in it."[46] In the eleventh, and again in the thirteenth Congress, similar attempts were made, but in both cases they were voted down.[47] It was evident that clear-headed party leaders did not propose to trust to luck in making up the committees, nor did they care to let the committees get beyond their control.

In view of the increased importance of the Speaker it would have been natural for the president to take a keen interest in the choice of that official. There is, however, little evidence to show that he attempted to dictate the selection. Perhaps before Clay's time there was little need for attention to that detail. It is significant that what evidence there is on this point is to be found after Clay had attempted to assume the direction of both the foreign and the domestic policy of the government. In 1821 some members of the administration had a few conferences with Taylor, one of the candidates for the office. Taylor was ready to promise to support the executive in return for whatever assistance they might give in securing the election for him. Adams was not unwilling to throw the weight of the influence of the administration in Taylor's favor, but Monroe determined to let the House solve its own problems, and Adams promised to take no more part in the affair.[48]

After Adams was elected he did not follow Monroe's

[46] *Annals*, 10 Cong. 1, 789-792; Blount's motion was lost, 24-87.
[47] *Ibid.*, 11 Cong. 1, 58; 13 Cong. 1, 157, ways and means only.
[48] J. Q. Adams, *Memoirs*, V, 428, 431-432, 434-439.

example of non-interference in contests over the speakership. In the spring of 1825, Webster assured the new president not only that he would not run against Taylor, but that he would give him his active support. Adams took pains to have Webster reminded of this promise when Congress convened. Before the House selected its presiding officer, Adams and Taylor talked over the composition of the committees in the event of the latter's election. The president and his candidate concluded that although they could not displace those who had been chairmen in the last Congress, they might very well "arrange the members so that justice may be done as far as practicable to the administration."[49]

By 1825, as the result of fairly steady development, certain institutions, the caucus, the standing committee system, and the speakership, had become firmly established in the House of Representatives. These can be dissected out from the main body, so to speak, and described accurately enough, each by itself. Such analysis is necessary, but it does not go far enough. The really significant thing, in addition to finding out the true nature of these institutions, is to see how they were related to each other, and how each contributed to the process of legislation. Then, because the president and his cabinet played a more or less important part in Congressional affairs, their connection with legislative institutions must also be taken into account. Statutes are the finished product of the combined activities of all these separate factors. Unfortunately for purposes of exposition, the relative influence of the several forces varied so greatly from time to time that snapshots of them all at work in different years would present very dissimilar results. President, cabinet, Congressional

[49] J. Q. Adams, *Memoirs*, VII, 68-70; Taylor was chosen on the second ballot.

leaders of the party organization, or the Speaker, might and did have the whip hand at different times. It is particularly difficult to describe accurately the relationship from 1811 to 1825, the very years when the standing committee system and the powerful speakership were developing, because it was a time of party disintegration. The balance of power was generally in the House, but members of the cabinet enjoyed no insignificant influence in legislative affairs, while Clay, one of the greatest Speakers, was at first, in 1818, decisively beaten on his favorite South American policy.[50]

The development of the speakership and the committee system was contemporaneous with the throwing off of that comprehensive executive domination which had characterized the Jeffersonian epoch. But the operation of these institutions in the House did nothing to strengthen and make permanent those habits of greater legislative freedom which were in evidence up to 1829. That the standing committee system did not make the House independent of an active executive can be seen from a glance at legislative history under various presidents, from Andrew Jackson to Woodrow Wilson. As it is, and as it has been for a hundred years, the organization of the House permits the application of powerful executive pressure, and in fact the wheels of the government have never run more smoothly than when the president has been in a position to drive Congress. When party lines are tightly drawn, and when executive and legislature are politically friendly, the committee system works well, because under such conditions there is coöperation and responsible leadership. At other times the division of the House into fifty or more committees tends to prevent the enactment of any carefully prepared legislative

[50] *Annals*, 15 Cong. 1, 1646; Clay's motion was lost, pp. 45-115.

program. The system is essentially a practical, not an ideal, solution of governmental problems, for which the Constitution must be held responsible. Before it can be changed very much the organic law must provide for a more definite connection between executive and legislature, and in addition must take into account the important position of the political party.

BIBLIOGRAPHICAL NOTE

The sources upon which this work is based are, for the most part, of three different kinds: legislative journals, correspondence, and newspapers. For the federal House of Representatives, the reports of debates, generally cited as the Annals of Congress, have been used extensively. The footnotes are numerous enough to show what material has yielded the most information.

Those portions of the study which deal with the regular standing committees are based primarily on the official minutes of the various legislative bodies, and on the Annals. These records show what new standing committees were created at various times, what kind of work was assigned to them, and what gradual changes occurred in the relations between committee and assembly. Beyond that point these sources do not go, and it is almost impossible to supplement them with evidence gleaned elsewhere, because newspapers and collections of correspondence are generally silent on the subject of standing committees. These records are with some few exceptions available in printed form.

With reference to those informal committees, the agents of the political party, the official records contain nothing at all. The Journals would never lead one even to suspect the existence of such institutions as the "Junto" or the caucus, and the Annals of Congress are almost as silent. For information about this kind of legislative machinery, which in some ways is far more important than the ordinary committees, recourse must be had to correspondence, diaries, and the newspapers. By the proper synthesis of these various kinds of

material a fairly complete account of legislative growth can be obtained.

Secondary works are useful for their discussion of the political situations which have at various times exerted an influence on legislative organization, but beyond this very important service of supplying a background they are not very helpful. They contain only a little information regarding the party organization in the legislature, and none at all regarding the development of the committee systems.

APPENDIX

LISTS OF STANDING COMMITTEES

1770.

New Hampshire.

None.

Massachusetts.

(1) On Petitions regarding the Sale of Land.

Connecticut.

None.

Rhode Island.

None.

New York.

(1) Privileges and Elections. *Grand* Committees on: (1) Grievances. (2) Courts of Justice. (3) Trade.

New Jersey.

Grievances.

1789.

New Hampshire.

None.

Massachusetts.

(1) Finance. (2) Encouragement of Arts, Agriculture, and Manufactures. (3) Incorporation of Towns, and Town Affairs. (4) Accounts. (5) New Trials. (6) Abatement of Taxes. (7) Petitions regarding the Sale of Real Estate. (8) Naturalization of Aliens.

Connecticut.

None.

Rhode Island.

None.

New York.

(1) Ways and Means. (2) Grievances. (3) Courts of Justice. (4) Privileges and Elections.

New Jersey.

Accounts.

1770.

Pennsylvania.

Grievances.

Maryland.

(1) Grievances and Courts of Justice. (2) Accounts. (3) Privileges and Elections.

Virginia.

(1) Religion. (2) Privileges and Elections. (3) Propositions and Grievances. (4) Courts of Justice. (5) Claims. (6) Trade.

North Carolina.

(1) Accounts. (2) Claims. (3) Propositions and Grievances. (4) Privileges and Elections.

South Carolina.

(1) Grievances. (2) Privileges and Elections.

1789.

Pennsylvania.

(1) Ways and Means. (2) Claims. (3) Accounts.

Maryland.

(1) Grievances and Courts of Justice. (2) Privileges and Elections. (3) Claims. (4) Trade and Manufactures.

Virginia.

(1) Religion. (2) Privileges and Elections. (3) Propositions and Grievances. (4) Courts of Justice. (5) Claims. (6) Commerce.

North Carolina.

(1) *Public Bills.* (2) Finance. (3) Privileges and Elections. (4) Propositions and Grievances. (5) Claims. (6) Indian Affairs.

South Carolina.

(1) Grievances. (2) Privileges and Elections. (3) Religion. (4) Ways and Means. (5) Accounts.

1791.

(1) Privileges and Elections. (2) Religion. (3) Ways and Means. (4) Accounts. (5) Courts of Justice. (6) Public Roads, Bridges, Causeways, and Ferries.

1770.

Georgia.

(1) Grievances. (2) Privileges and Elections.

1791.

Georgia.

(1) Privileges and Elections. (2) Accounts. (3) Petitions. (Three committees, referred to as Committee on Petitions No. 1, 2, and 3, respectively.)

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